



ZONING BOARD OF APPEALS
RICHARD D. CARNEY MUNICIPAL OFFICE BUILDING
100 MAPLE AVENUE
SHREWSBURY, MASSACHUSETTS 01545-5398

June 24, 2004

PUBLIC HEARING: AvalonBay Communities, Inc., 890 Hartford Tpke., Shrewsbury, MA.

PURPOSE: To hear the appeal of AvalonBay Communities, Inc., 1250 Hancock Street, Suite 804N, Quincy, MA, for a Comprehensive Permit pursuant to the provisions of Chapter 40B, Sections 20 to 23, of the Massachusetts General Laws, to permit the construction of a 277 unit multi-family apartment community upon property located at 890 Hartford Tpke. The subject premises is described on the Shrewsbury Assessor's Tax Plate 36 as Plots 40, 41, 45 and 51.

PRESENT: Anthony M. Salerno, Chairman, Paul M. George, Melvin P. Gordon, Bridget M. Murphy, Ronald I Rosen and Ronald S. Alarie, Building Inspector.

Mr. Salerno opened the hearing by reading the advertisement as it appeared in the Worcester Telegram on June 9, 2004 and June 16, 2004.

Mr. Roberts passed out packets to the board members and the members of the audience.

Mr. Salerno: With that being the legal ad for tonight's petition, we're asking that the proponents of this come forward here to the table. Prior to making your presentation, it has been the tradition of this board to just layout some procedural ground rules. This is an informal hearing as far as the rules of parliamentary procedure or any of that. They don't apply here. This is town government for the residents and citizens of the Town of Shrewsbury.

We ask that the meeting follow this format, as this board has always asked over the years. That is, let's be respectful of each other even though we have a difference of opinion and positions in this. The board needs to be informed of everybody's position. They'll all have an equal amount of weight and influence upon us. Certainly, out of respect to each other, we want to hear everybody's opinion. We're going ask you to identify yourselves for the record and to make your presentation. There's an audio record being made that will later be transcribed into minutes. So, you need to identify yourself. After the proponents make their presentation, it's your burden to present your appeal. We don't assist you in that. The board will have some specific questions for you. After the board questions the proponents, we then traditionally open it up to the residents of the town. We ask you to address your comments to the board, identifying yourself. We'll try to

elicit the answers for you. We ask you to give everybody a chance to air their opinion and not to monopolize it with repeated questions. So, if somebody asks the question you're asking, let's not visit it twice.

So, with that in place, identify yourself, sir, and make your presentation.

Mr. Roberts: Thank you Mr. Chairman. My name is Michael Roberts, Senior Development Director, with AvalonBay Communities.

Mr. Salerno: Can everyone hear him back there? Okay.

Mr. Roberts: If I might ask, perhaps I could suggest standing up and presenting it so that I can address everyone?

Mr. Salerno: Whatever you're most comfortable with.

Mr. Roberts: This evening, what I have in these handouts is a series of pages regarding AvalonBay. This will sort of run through my formal presentation. In addition, there is an 11 x 17 handout that has the proposed site plan as well as some proposed revisions. In the back, there are some proposed landscaping buffers. Supplemented by that, I'll have a series of boards which will go through the presentation with as well.

I have with me this evening representatives from H W Moore and Thompson-Liston Civil Engineers, representatives from Rizzo Associates, our traffic engineers, representatives from Goulston & Storrs, our legal counsel.

First of all, I would like to thank you for your time this evening. We do understand that a proposal such as this does require a lot of time and resources on behalf of the town. So, we do certainly appreciate your willingness to do that in this particular instance.

What I would like to do is just very briefly give you an overview on AvalonBay Communities, very briefly. Then I'll get into the details of our proposal, suggest some potential changes, talk about some of the benefits and impacts and then, most importantly, I'd be more than happy to address any and all questions and comments.

AvalonBay Communities, as most of you may know, is a real estate investment trust. We're a public company. Our only business is to develop, own and manage, for the long term, apartment communities throughout the country. We are a big company. We're a 5 billion dollar company. We have over 40,000 apartment homes across the country.

There are advantages to being a large company. Financially, we are very secure. We have an ability to come in with a proposal like this and finance it ourselves without the need to get financing from other folks, which helps lend a certain amount of stability to our proposals. In addition, being a large company offers a vast amount of experience in this business. We've been a public company for 10 years doing this and, prior to that, as a private company for 20 years. So, we like to think that over the past 30 years or so we try to get better every time we propose a new development.

We also understand, however, that no matter how you look at it, it's a local business. So, we are set up in a manner that we can act as a local company. We have our local offices here in Quincy center where we have AvalonBay associates who live and work here, who oversee all aspects of our developments and our development construction management. We like to take a very hands on approach to our developments. I will be involved in this development from beginning to end. I'm one phone call away. That's the way we like to conduct our business. We're a very active developer here in the commonwealth. We have over 4,000 apartment homes. We are the most active developer of mixed income rental communities in the commonwealth.

We're very proud of our reputation. We've been working very hard at it over the past several years. We've been nationally recognized as the top builder and manager of apartment communities in the country. We've had several individual communities that were also nationally recognized. Most notably, our most recent completion in Newton, 294 apartment homes, just received a national award for the best multi-family development in the country. It's noteworthy because we're very proud of it. It's a local deal. But, also, that development in Newton was a mixed income community similar to this proposal. Twenty-five percent of the units are affordable. This recognition had nothing to do with being an affordable development. We were up against countless market rate luxury apartment communities across the country. So, we're very proud of that one. I think it's a good indication of the type of mixed income development that the commonwealth is encouraging.

On to our specific proposal, I would just like to spend a few minutes on the site. I have an aerial here. Hopefully everyone can see it. Certainly, I'm assuming most people are familiar with the site. It's approximately 25 acres.

Mr. Salerno: I would like to just interrupt you. If there are any folks in the back who can't see it, what you could do is just move along that wall so that you can get a better view. Okay? Thanks. I'm sorry, go ahead.

Mr. Roberts: This is Route 20 heading east towards Route 9, which is about a mile and a half away. We have Walnut Street located here. In the back, actually, is the Southwoods development. This aerial was taken prior to that development, but this is Waterville Lane, approximately, this proximity. On the existing site, this is Rawling's Gear Works, this is an operating landscape materials supply company and the Rainbow Motel is across the street.

The site itself is relatively flat where it has already been cleared in the past for its existing operations. As you head towards the rear of the site, you have some significant grades. Essentially, it goes up hill as you head towards the rear of the site. So, as an example, in this particular area, you're about 45 ft. higher than you are down here. We do have wetlands which are located essentially in this area of the site. There are wetlands in this proximity. Parts of them encroach on our site. Those have all been flagged and delineated and have all been incorporated into our site plan.

As you had mentioned, our official proposal is for 277 apartment homes. This board is the actual submission of the 277 apartment homes located in the aerial site here. The

apartment homes are primarily located in 2 types of buildings. The main part is an apartment building. We have 9 apartment buildings located towards the front of the site, where the site has already been cleared. These are pretty standard apartment-type buildings. They're 3 stories, all single level apartments, with a mixture of 1-bedroom, 2-bedroom and 3-bedroom apartment homes. I actually have a photograph on a board here of an actual building that we're proposing that we completed on the south shore. These buildings are entered through common hallways. As you enter, you'll have 4 apartment homes that you gain access to, 2 on one side and 2 on the other. There are 2 series of corridors in each building going 3 stories up.

In addition, towards the rear of the site, we have proposed town home units. They're currently in clusters of 8 town home buildings. Each apartment home in the town home is a separate unit. It has its own front door, its own garage. We used this building type for a few reasons. First, it's always nice to have different alternative, different options for potential residents. Secondly, this particular type works very well with grades. So, we're able to actually incorporate the hill and the existing grades more so that we are with building types. Then, finally, this is a much less dense product. It's lower in scale. We felt that it was important as we got towards the rear of the site with the buffer to our existing neighbors. Actually, it's in this handout the third page from the back and actually has a photograph of these town homes which I've also included here. We've recently completed them in Saugus. As you work with the grade, you have a front elevation that has a garage on the first level, the second level is your living space, living room, dining room and kitchen and then your third level contains your bedrooms. They're all 2 bedroom apartment homes. In fitting them into the site plan and with the grades, what that allows us to do is have a rear elevation that's actually 2 stories. So, as we face the buffer towards the rear of the site, you would be looking at a 2-story elevation in addition to this physical existing buffer of both a hill and existing vegetation.

In addition, we have a community center, a management and amenity center, located at the front of the site. It's about 6,400 sq. ft. It primarily is for our residents. We'll have an outdoor pool, an indoor basketball court, an indoor healthcare facility, community room, as well as certain services. We do package drop-off, dry cleaning drop-off, etc.

Mr. Salerno: Excuse me; did you say a healthcare facility?

Mr. Roberts: I misspoke. It's a fitness center.

Mr. Salerno: Fitness center?

Mr. Roberts: Essentially, it's a room with modern fitness equipment. In addition, it also houses our onsite staff. We will have management and maintenance, AvalonBay representatives, at the site 7 days a week. We'll have 1 or 2 living on site.

Parking is distributed throughout the site primarily in surface parking spaces. But, in addition, we do have, as I mentioned, internal garages in the town home units as well as a select number of detached garages to help serve the apartment buildings. These are just separate structures, 1 story that have a line of between 5 and 8 individual garages.

So, in our site planning, from our original perspective, we wanted to make sure that we tried to lower the density as we got to the rear of the site. We also have created a 100 ft. buffer towards the rear of the site here. There is some pretty significant existing vegetation that we are using as a buffer.

In addition, we do have a portion of this site which has been carved out for retail use. One of the things, in working with the town for the past 6 or 7 months, was a real desire to at least preserve a majority of our frontage along Route 20 for retail development.

This was the plan that was included in our submission. After we submitted our proposal, we did hear some comments from the planning board. We also sponsored a meeting with our neighbors at our other community, Avalon Arbor, where we were also able to hear of some issues or comments.

So, as a result, from a site planning perspective, the planning board was concerned in particular about the circulation in this portion of the site. It's very busy. You have people turning right and left to get into different areas of the site. That was listed as a concern. In addition, there was a desire to have a bus stop incorporating the site plan towards the front of the site. In addition, they wanted us to officially locate a potential area for a tot lot to serve the children on the site.

Also, as part of our neighborhood meeting and at the end of the meeting, we actually did get into our cars and go to the site itself. I was able to review the site plan while actually being in some of the back yards here. From one of the biggest concerns, we had created this 100 ft. buffer. As the development sort of tiered off back this way, we had also taken our buffer and tiered it off as well. When you got to the site and you got particularly to this area, this building became visually very close and complicated as well by the fact that you don't really have existing trees there to buffer the building. So, that was a concern.

In addition, in this particular area, you have these town homes here. The wetland actually clears a little bit so there is a visual corridor here. So, there was a concern about those particular town homes because there wasn't as much of a tree buffer. Also, this is on a flat portion of the land. So, both the front and back are at 3 story elevations. In addition, this particular set of town homes, while they do have a nice tree buffer, also have a 3-story rear elevation. That was something listed as a concern.

In addition, there was concern on site lighting. I'll try to illustrate more clearly our intended lighting.

Also, there was concern about trying to define landscape and or fencing buffer in the rear.

So, as a result of these comments, we do have a revised proposal which is the second page of the 11 x 17 handout. What we have done with the revised proposal is, first we've located a spot at the front of the site for a bus stop. In addition, we've located the tot lot in the middle of these 4 buildings. It's a central location. It's also back off from Route 20, which also is a potential concern. So, it's within the central area of the site.

As it relates to the concerns of this building, probably the most significant change is that we've removed 14 units from that building making it a smaller footprint. We've also reoriented it so that it is pushed further back from the site. In addition, by placing the parking on this side versus the other side, we're able to push the building back even further. So, with the revised site plan, it's 14 units smaller. We're able to extend the 100 ft. buffer throughout the back of the site. In fact, we're probably about 150 ft. from our actual lot line and certainly probably about 200 ft. from the nearest foundation.

In addition, the town homes that I had mentioned here that were 3 stories, we have moved them to the other side of the road to help create more of a linear buffer. I've also reconfigured those buildings so that they're 2-story town homes, front and back. Essentially, what we've done is eliminated the internal garage so that the parking will be surface parking, either in the rear or over here.

So, the end result is the town homes that were of concern about are probably about 200 ft. from the lot line and they are a 2-story elevation. In addition, this string of town homes we have also lowered to a 2-story elevation front and back. So, they're 100 ft. back. They have a more substantial existing landscape buffer and it's a 2-story elevation.

As it relates to site lighting, this one may be a little bit harder to visualize, and I apologize, from a distance. Essentially, the site lighting is indicated with these red dots. We want the site to be properly illuminated for safety concerns, but we don't want to over light the site. The way that we accomplish that is, each of these red dots represents a 12 ft. high light pole which is decorative and, more importantly, it has an actual light fixture that concentrates the light to stream downward as opposed to upward and outward. Actually, in that Saugus town home photograph, you can see this exact light as part of the photograph. So, they're evenly dispersed with one that is probably closest to the back end of the site right here, approximately 100 ft. back. This one's about 150 ft. back. We would certainly plan on submitting a formal photometric plan that would more scientifically quantify the lighting for review by the town to make sure that the lighting concerns have been addressed.

In addition, we're proposing a landscape buffer in the rear of the site, which is the last page of the 11 x 17 handout, which is essentially a 4 ft. high berm with, I believe, 6 to 8 ft. evergreen trees dispersed throughout the berm to help create more of a visual buffer. Our proposal is to locate them closer to the neighbors in the back yard versus on our side of the site. I think you'd lose some of the impact the further back you go.

As far as fencing, we don't have a formal proposal. We've heard a desire to have a fence to just, primarily I think, the concern is to the extent that there are children and to make sure that the area is secure back there with a fence. There are other opinions about having fences and not having fences. We are open to really whatever the board determines is the best solution.

So, our new site plan proposal contains 264 apartment homes, 220 of them are within the apartment buildings and 44 of them are in the town homes. We have a unit mix, something we have discussed with the town to try to skew the mix more toward 1 and 2

bedrooms. As it relates to school age children, if you look at the data, essentially most children are living in 3-bedroom apartment homes. So, we have 98 1-bedroom apartment homes, which is 37 % of the community, 142 2-bedroom homes, which is 54 % of the community and we've limited the 3-bedroom apartment homes to 24, which is approximately 9 % of the community.

As I have mentioned, 25 % of the apartment homes are affordable. We would be willing to accommodate a local preference for that affordability. Five percent of the apartment homes are fully handicap accessible. So, it is fully fitted out to accommodate any special needs of handicapped residents.

Parking with the revised site plan is approximately 2 spaces per apartment home, which we feel is adequate. We try to get within the 1.8 to 2.0 range. So, we're very comfortable with the parking that we have with this proposal for both our residents and their guests.

These are nice buildings. They're new, modern apartment homes. I would recommend for those of you who want to get a better feel for what we build, you're more than welcome to visit any of our communities. We have Avalon Orchards in Marlboro, Avalon at Flanders Hill in Westboro and Avalon Arbor in Shrewsbury. You can coordinate that through me. You can just show up and we'd be happy to accommodate any tours. But, these are nice buildings. Each apartment is fully carpeted. Each apartment has its own separate heating and air conditioning system. Each apartment has its own full-size washer, dryer, fully and modern applianced kitchen. Certain apartments have bay windows, fireplaces and loft features as well.

What I would like to do now is really just sort of review some of the impacts and benefits of our proposed development. As it relates to the site itself and our management, as I had mentioned, we manage on site. We'll have associates living there. We run a pretty tight ship. It's very important that all of our residents enjoy their living experience and, so, safety and security are of the utmost concern. So, we supply that with our associates on site. From a life safety perspective, these buildings are all fully sprinklered. They are certainly up to and in excess of Massachusetts codes both for fire suppression as well as the fire alarm systems. As far as the infrastructure, AvalonBay takes care of our entire site. We plow the streets, we clean the streets, we fix the site and we pay for and take care of trash removal as well.

As far as specific reports or studies that we did in relation to this site, we did a traffic study which I will have a representative from Rizzo very briefly outline for you. In addition, we preformed a study on school aged children. That certainly is something that is of concern to most of the towns that we deal with. Certainly, we want to build a community that's attractive to families, but we also want to do what we can to help mitigate those school aged children impacts. As I mentioned, what we've done primarily is just skew the unit mix to lower the number of 3-bedroom apartment homes. We have the benefit of 4,000 apartments in Boston, the greater Boston area. So, we internally have our own statistics that help breakdown how to calculate and project school aged children. The biggest thing you can do is lower the number of 3-bedrooms. You virtually have no school aged children living in 1-bedroom apartment homes. In 2-

bedroom homes, you actually have less than what you would probably think. Statistically, we have found 1 child per 2 2-bedroom homes. I think if you look at our resident profile, we have a lot of young professionals who haven't started a family, we have a lot of roommate situations. So, while there will be children in a 2-bedroom, it is pretty minimal. Three bedroom apartment homes are really where you find the majority of your children.

Mr. Salerno: Can you give me the numbers again on your 3-bedrooms? I'm not quite sure I understood what you said. Did you say that 25 % have 3-bedroom units?

Mr. Roberts: No. There will be a total of 24 3-bedroom apartment homes, which represents 9 % of the total units.

Mr. Salerno: So, there are 24 3-bedroom units?

Mr. Roberts: Correct.

Mr. Salerno: And, 25 % of those would be affordable?

Mr. Roberts: Correct.

Mr. Salerno: So, basically 6?

Mr. Roberts: Correct.

Mr. Salerno: Okay, I'm sorry.

Mr. Roberts: As a clarification, the affordable units are dispersed evenly through the different unit types and the different building types. So, our design is sort of a transparent program where the affordable units are of the same quality and design of the other 75 %.

We took our statistical data for the greater Boston area and defined it based on affordability and the unit types and projected somewhere between 30 and 40 new school aged children in the system. It will probably be closer to 40. If we took the actual data from Avalon at Flanders Hill, which is our Westboro community and a new community of similar building types, similar size, that number would actually be slightly lower, probably in the mid 30's.

As it relates to traffic, we completed a formal study which is included in our application. One of the concerns was the entrance way here as it relates to the traffic on Route 20. I think what you'll find in the traffic report is that general residential developments have lower traffic impacts than other uses, certainly as it relates to commercial and retail. Ultimately, I think that the traffic pattern that you'll see from this development will be similar or slightly lower than what you would see at other unsignalized intersections on Route 20.

In meeting with Mass Highway, both before and after application, the amount of traffic generated here does not warrant a traffic signal at the site. In addition, it was felt that the signals on either side of our site would help to create the openings that would provide access in and out of our site. In addition, there are a lot of proposals on Route 20 for the widening of Route 20. Again, we've had a follow-up meeting with Mass Highway just last week and there are some specifics as to what they would like to see, which we will also discuss briefly.

So, at this point, if I could just ask our consultant at Rizzo to just very briefly go over some of the traffic.

Mr. Hall: Thanks Mike. Mr. Chairman, members of the board, my name is Mike Hall. I'm a project manager with Rizzo Associates. We're located in Framingham. We're a consulting engineering firm. We were responsible for the traffic study that was included in the packet for this project.

What I would like to do, as Mike said, is very briefly give you an overview of what we did. In our traffic study we looked at a total of 5 existing intersections along Route 20, on Cherry Street, on Green Street and South Street, South Street, Walnut Street and Route 20 and the Village Shops and Valente Drive and then also the site drive for the project. We had conducted counts in February of 2004 and projected ahead to the future looking out a total of 6 years. The opening year, which is 2005, is projected now plus 5 year at a time. We evaluated the traffic operations in the future with or without the project to quantify what the impact of the project is. We obviously did an existing analysis.

Just briefly to summarize our findings from a traffic operations perspective, the project does not have a large impact on traffic on Route 20. The expected increases in the future are between 2 and 4 % compared to what the volumes would be on Route 20 without the project. This project would not change traffic operations dramatically at the intersections of Route 20 and South Street, Cherry Street and Valente Drive, especially the last 2 when they're signalized in the future. In terms of traffic, there's something called a "level of service." It's sort of like a report card, if you will, of A through F. At those 3 signalized intersections in the future, this project would not add enough traffic to change the level of service at those intersections.

From a safety perspective, our research on the existing intersections along Route 20, there was no intersection that had a very high accident rate for the number of accidents. I think the highest location had 6 accidents in 3 years. That was at Route 20 and South Street. We calculated and compared the accident rates for these intersections and compared them to state wide and Massachusetts Highway Department district wide rates for the Worcester County area. They were well below both. We measured site distance at the proposed site drive. It's adequate for the speeds out there. They are 1,500 and 1,800 ft. looking either way, almost 3 times as much as we would need. As Mike alluded to, the operations at the site drive are maybe of a concern. In the report, there was a level of services presented for the intersection. I would clarify a little bit those results that you saw. Those results don't indicate operations for the whole intersection. As Mike said, the deficiencies in the operations are just for the left-hand cars turning out. A car turning

left in, cars going through, they're level of service A. Cars turning out right won't have as much of a problem. It's the lefts that are and they're a fairly small number. Just as a way of comparison, at the site in the morning and afternoon peak hours, we project 40 or 45 vehicles exiting. Today on South Street in the morning, there are 60 left turning vehicles, Walnut Street southbound in the morning, 45. At Olde Shrewsbury Village turning left out in the morning, there are, I think, 65 and at the village turning out in the afternoon it's 50. So, those are all pretty comparable to the 40 and 45 we would expect in the morning and the afternoon peak hours at Avalon.

Ms. Murphy: Excuse me. Your projection on the number of vehicles during peak hours, how did you get that? I mean, you've got 200 and some units and at least, based upon the representation, most of these people are going to be going to work. How do you get 40 trips out of 270 some units?

Mr. Hall: Well, those were just lefts. There are equal amounts turning right, or more.

Ms. Murphy: I guess my question is, how did you get there?

Mr. Hall: To project trips on a peak hour or daily basis for this type of development, we have standard reference sources. The Institute of Transportation Engineers publishes a manual that is 3 volumes like this of land uses of all kinds, shopping malls, donut shops, apartments, single family homes. There are measurements done by firms like ours across the country. They've compiled this data. There are thousands and thousands of data points. Based on actual counts at other locations, there is a way to calculate. If you know how many units you have, in this case it's housing units, you can plug into an equation or pull a number off of a graph that shows you that, if you have 278 units, you have, in this case, about 170 trips in a peak hour. Some are coming in, some are going out, some are turning left, some are turning right. If you have a chance to read the study, it shows that what we project would be on a daily basis for the residential and then the morning peak hour in the afternoon.

Ms. Murphy: That's based on a similar community in terms of location of the housing complex versus a metropolitan area versus a bedroom community? I mean, that's really my question.

Mr. Hall: The data that we use as a resource counted facilities similar to this, apartment complexes. They may vary where they're located. Some are in California, Florida, Massachusetts. It's data that's pulled in from the whole country. It sort of gives you an average rate of what it might be.

Ms. Murphy: So, it's based on an average? Okay.

Mr. Roberts: I if could maybe just add, we have also done studies of our existing communities once they're developed to see how they compare to these volumes of statistics that I certainly don't fully understand. We have found that our actual numbers come in, more often than not, lower than what the statistical data provides in the technical analysis.

Mr. Hall: We've done the counts for Avalon at a number of places. I think another thing to remember from where we're coming from from a traffic analysis perspective, is we're trying to look at a 1 hour period. It might not be exactly 7:00 to 8:00 or 8:00 to 9:00. We go out and count and we go out and analyze. We're looking for, in essence, 4, 15 minute periods in a row that are the highest. So, it could be 7:30 to 8:30. It varies from town to town, street to street. The numbers that I'm quoting are based on the projections for 1 hour. Obviously, people leave for work before and after that. So, we're looking from an analytical perspective. We just focus on 1 hour. But clearly, during the morning period between 6:00 and 9:00, there are also people leaving. But, for the methodology that we need to do based on what the Federal Highway Administration wants and what the State of Massachusetts wants and what the standard of industry practice is, we look at a peak hours, morning and afternoon, depending on the use. If this was a retail shopping mall, we'd look at Saturday. But, being primarily residential, we look at weekday mornings and weekday afternoons.

Mr. Salerno: So, the peak hour that you give us, you said there are 3 different intervals that you measure? The peak hour, the morning hour, you said that there are 3 different units that may make that up?

Mr. Hall: Four. Four consecutive 15 minute periods. So, it could be 7:45 to 8:45.

Mr. Salerno: Are you giving us the average of those or the lowest score of those 4 when you give us those numbers that you just gave us?

Mr. Hall: Those are the peak projections for that hour. I guess, from an analytical perspective, we look at the real time specific to the location. In this case, Route 20. At 7:30 to 8:30, which I think is what we found, that's what we analyze. We take the volumes that we counted on the street from 7:30 to 8:30 and those are our base line that we analyze for existing conditions and project into the future. But, as far as trip generation from the reference source, it's irrelevant as to which hour it is. It's just the peak of the A.M. and the peak of the P.M. That's plugged into the local data that we counted. Does that answer your question? Does that help?

Mr. Salerno: I just want to know you arrived at that.

Mr. Hall: It's the peak that is the short answer.

Mr. Gordon: And you've not considered any of the commercial traffic that will result from the proposed shopping center, although Avalon can take it back if they want to?

Mr. Hall: Our study has trip generation for both. If you look at the study, we have trip generation for both and we have analysis for both driveways.

Mr. Gordon: So, you're saying that, if there was a donut shop there that we understand does 197 trips an hour in our peak areas, you considered 197 cars?

Mr. Hall: Well, what we're talking about tonight is just the driveway to the residential.

Mr. Gordon: And I'd be happy with that if part of your proposal didn't say that, if the retail doesn't go, Avalon can elect to take it back over. So, then it becomes part of Avalon again. Does it remain commercial or does it become another 40B?

Mr. Hall: I would defer to Mike on that one.

Mr. Roberts: A couple of clarifications. First, our traffic impact study did incorporate that retail being developed. So, all of the grades that we're talking about assume that that retail exists as part of the growth scenario. As it relates to taking back that portion of the site, our intent really was that we want to see something happen there as much as you do. So, to the extent that there is a delay in something happening, we would want the ability to take that back and control it so that it doesn't sit vacant as a partial landscape materials use for a long period of time. So, I think our intent and our interest are aligned from a legal perspective. Steven Schwartz from Goulston and Storrs may want to comment on just the technicalities of that clause.

Atty. Schwartz: Steven Schwartz from Goulston and Storrs, counsel for the applicant. What the provision says is that, if that particular parcel is not developed, I think it's within a 12 month period, Avalon has the ability to take it back. The purpose of that and the intent was not for a second phase of residential development or anything like that, but really to control what was intended to be what the town wants it to be, a commercial development. That is to say that, if the people who are doing that development and are retaining that parcel are unsuccessful, then Avalon would then as the abutting landowner have a crack at doing it. It's not to do a second phase of this at all.

Mr. Gordon: Then you would have no problem putting that into the decision?

Atty. Schwartz: I'm sorry, putting what into the decision?

Mr. Gordon: The fact that it's always going to remain commercial.

Atty. Schwartz: I will speak to Mr. Roberts about that. I don't think that it's the intent to do a second phase.

Mr. Gordon: "Intent" frightens me. "Absolutes" don't frighten me as much.

Mr. Roberts: I appreciate your comment and concern. If I may, let me think about it and try to figure out how we can satisfy that request.

Mr. Gordon: Before you leave tonight?

Mr. Roberts: Before I leave tonight.

Mr. Confalone: Can you identify this evening as what are the peak periods and people returning from work?

Mr. Hall: Yes, the afternoon.

Mr. Confalone: What did your study say about people going westbound down Route 20 and having to take a left back in there? There's a lot of traffic flowing that way and it will probably back up.

Mr. Hall: Yes. It calculates out at a level of service A or B. As you know, everyone here drives and so everyone is a traffic engineer. It's much easier to take a left off of the main road into the side street than it is to take a left from the side street. The split on Route 20 is about 70/30 in the morning going eastbound and about 65/35 in the afternoon going westbound. So, there's a much higher volume coming this way. So, the traffic stream, the people wanting to turn left into the site who will have to cross over, is a lot less. It's more like 600 or 700 cars versus maybe 1,300 or 1,400 cars or 1,500 cars going this way.

Mr. Confalone: You're saying they should be able to take a left without any real backups?

Mr. Hall: That's right. Well, actually, the next board will sort of address that very question.

Mr. Gordon: How many new intersections do you see that start out at an F? Your intersection is going to be an F intersection going west?

Mr. Hall: More than you would think.

Mr. Gordon: How many?

Mr. Hall: There are quite a few.

Mr. Gordon: You start out acknowledging that it's an F, but it doesn't mean a lot?

Mr. Hall: That's right. It's sort of a catch 22. What happens here is that this is a street that has a heavy volume on it. There may not be many lefts coming out, but even 1 or 2 lefts might be an F. I mean, these levels of service, these grades are based on delay. So, if you have more than 50 seconds of delay, it's an F. See, that's what we're kind of tied into in my industry. If it takes 55 seconds to take a left out, it's less than a minute, and categorically, it's an F. If it's more than 40 seconds, it's an E. These are sort of national standards. Maybe in Nebraska 55 seconds is unacceptable. Around here I think people, for good or bad, tolerate those kinds of delays fairly routinely. So, we're sort of stuck with the national methodology and it's not always easily translatable to how people drive in Massachusetts.

Mr. Gordon: So, do you think it would be reasonable that, during high peak periods, there should be a right turn out only?

Mr. Hall: I think if that sort of condition was put on, I think what would happen is there's a light being proposed down at the village shops and there would be a lot of u-turns there. I'm not sure that's any worse than someone waiting for the appropriate gap to take a left. I think one thing to recall, what's going to be different in the future is, that

that new light's going to be down here. We have a light to the west already at South Street and there's going to be a third light at Cherry Street. So, there'll be lights on either side to help create gaps.

One of the proposals is that there is going to be some widening on Route 20. In fact, if I can hop over here, as Mike said, we had actually met with the Massachusetts Highway Department in Worcester this Monday to get their take on it. Just to get yourself oriented, this top plan sort of shows the whole corridor from South Street to Green Street, the light there down to almost the ramps to Route 9 eastbound. There's a proposed signal there and there's an existing signal here. Today it's mostly 2 lanes through here and sort of transitions out to 3 lanes as you come up to this light. There's actually a 4 lane cross section at the light. There are 2 through lanes westbound and eastbound you've got a left turn lane and a through. After looking at our numbers and meeting with us Monday, the highway department would like, as mitigation from their perspective and they control the road, to see where this starts to taper down to where this goes back to 3 lanes, this piece that's 2 lanes, which translates to this area here between this yellow line and I know it's hard to see, and here, they want that 2 lane cross section westbound carry all the way down to meet the existing 2 lanes. So, you have 2 lanes westbound, 1 lane eastbound and so a 3 lane cross section on Route 20. So, for drivers turning into the site, they'll have a lane that they can turn into. It won't be an exclusive left turn lane because a lot of time there won't be anyone turning left there. So, this gives the through capacity that the highway department wants. Because of other development in the area, this is going to grow. So, the majority of the time, the 2 lanes will be used as through traffic, but if someone's turning left, there is an opportunity for the drivers behind them to go around on the right safely rather than on the shoulder.

Mr. Gordon: Do they want any acceleration or deceleration lanes?

Mr. Hall: They want a deceleration lane in advance of the commercial site drive-up, they want a wide shoulder between them, which is essentially another lane so that it can act as an excel lane for people coming off of the commercial and then an excel lane east of the drive from the housing, which would eventually taper back into the one lane and then it will flare out down at the new signal. Based on our meeting this week with the highway department, that's what they're looking for. We had actually talked to them about doing an exclusive left turn lane. They preferred the 2 through lanes because they feel like they're going to need a through for the future because of the other projects and the volume on the highway.

Mr. Salerno: Have you had a chance to share that information with our engineering department?

Mr. Hall: We have not. Again, we just had this meeting Monday. We have to sort of digest it ourselves. That's what they wanted so our reaction to it is well they control the permits for the state highway and we need an access permit from them. So, if that's what they want, that's what they'll get.

Ms. Murphy: Excuse me. The traffic studies that you did, did you do them prior to the construction that was started on 290? Did you take into account the increased traffic on Route 20 in the wake of the construction going on there?

Mr. Hall: We did the counts in February of this year. I don't know where the construction was on 290 at that time.

Ms. Murphy: It hadn't started yet.

Mr. Hall: I had nothing to do with that. It started afterwards?

Ms. Murphy: Yes.

Mr. Hall: All right, so it should be a fairly normal pattern. February's are generally low months so we had boosted it up based on counts. We always sort of analyze an annual condition, if you will. February was low so, before we did anything else, we boosted those up by 2 % and then grew it in the future from there.

Ms. Murphy: Okay.

Mr. Hall: That should be in the report if you want to reference that. I guess that's it for now and I'll try to answer any questions later.

Mr. Salerno: Thank you Sir.

Mr. Roberts: I would like to basically conclude the formal presentation by just a quick review of some of the benefits that we see of this development proposal.

First of all, we will be a taxpayer in the Town of Shrewsbury in the form of real estate taxes which we estimate are between \$250,000 and \$300,000 a year. There will be excise taxes paid in the neighborhood of \$75,000 a year.

Providing affordable housing, as I mentioned, 25 % of the apartment homes will be affordable, and again, I've mentioned that we are amenable to making a local preference part of that affordability. In addition, because it is a multi-family rental community, 100 % of the apartment homes count towards the 40B count for the Town of Shrewsbury. So, it's a very effective way of helping mitigate the impacts and increase your 40B count. I believe the number of units also exceeds a threshold that would put, effectively, a hold on any future 40Bs for a period of, I think, 1 year, potentially longer than that based on some new regulations.

Mr. Gordon: Mike, this is a good time for me to ask this particular question. You have Avalon Arbor, okay, which has a special permit that I believe is similar to the Wellesley permit, which did not have a time limit on it. I understand that you're working towards a statement that those apartments will remain affordable in perpetuity? It doesn't make any sense to me to approve 264 apartments and potentially lose 305.

In addition to that, we noticed reading your website that Avalon Arbor is in default of its mortgage and could declare bankruptcy, although the mortgage is held by an Avalon Company which would then sneak you out of affordable housing. Can we have a guarantee that that is not going to occur and that these apartments are going to be affordable in perpetuity?

Mr. Roberts: I cannot guarantee as it relates to Avalon Arbor. Obviously, that's a separate development built at a different time. Also, as you have stated, we are actually the mortgage holder. Another entity owns it.

Mr. Gordon: It's happened before where one mortgage holder puts another one out of business.

Mr. Roberts: Sure. The affordability and the length of the affordability we really need to treat separately from this particular development proposal.

Mr. Gordon: Well, we have to consider them as sort of a linkage because we want to get away from 4 point something and not go back to 3 point something. If this one defaults, goes bankrupt and somebody else, a non-Avalon company buys it and decides that it's all going to be market rate apartments, I would think that's a major concern and I would think that the 2 are tied together.

Mr. Roberts: I respectfully disagree. I think they really do need to be treated separately. As it relates to this particular development, we can do certain things to clarify and guarantee affordability in perpetuity. That's certainly something we'd be willing to consider for this development.

Mr. Rosen: When do they expire at Avalon Arbor?

Mr. Roberts: I think it's within the next 3 or 4 years.

Mr. Rosen: It was a 15 year?

Ms. Murphy: As long as we're talking about entities, in looking at the application, one of the requirements of the application is that you provide proof that the applicant is a public agency, a nonprofit organization or a limited dividend organization. I didn't see anything in the filings that would meet that requirement. So, who are we really dealing with as an applicant here?

Atty. Schwartz: I'll speak to that. Because this is not a conventional 40B, but it's a local initiative program project, the requirement that the applicant be a limited dividend entity is not in the regulations. So, actually, the applicant that you have is AvalonBay Communities, which is the public entity, the real estate investment trust, which Mr. Roberts spoke to earlier. We are required, as a matter of fact, by the regulatory agreement that we're going to enter into with the Department of Housing and Communities Development and with the town to restrict the dividends from this project. So, functionally, in terms of the return on equity and those types of regulations, it will be the same thing. But, an applicant in this kind of project does not need to be a limited

dividend entity. In fact, DHUD approved the LIP application that was submitted by the town and by Avalon on that basis.

Mr. Rosen: I have a question when you said they're separate entities and should be dealt with separately. But, as the mortgage holder of Avalon Arbor, wouldn't that give you influence?

Mr. Roberts: Absolutely.

Mr. Rosen: So, again, I don't see the separation of the 2 entities based on AvalonBay holding the mortgage on Avalon Arbor.

Mr. Roberts: As far as the permitting for this development, we are in the position where we need to keep it separate. Frankly, the difference between an affordable and a market rate apartments go, there's an enormous amount of equity value at stake here. We are the mortgage holder, but there's also an equity partner here as well.

Mr. Rosen: Correct, but then in 5 years down the road, we're in no better position than before tonight. We're worse. We're 20 units behind.

Mr. Gordon: Talking about affordability, I believe in inclusive zoning. But I read Section 2 of where you go and how you do things. It states in there that you acquire and manage high quality apartment communities in the high barrier to entry markets. I don't understand what that means. I did not see any high barrier markets and I didn't see a Stow or a Sherborn or a Belmont. To me, those would be high barrier markets. An inclusive community that has 20,000 sq. ft. lots as their largest lots is not. You've made 2 bites in this town and both bites were in either commercial or limited industrial areas. You never made a bite in a residential area where it might be appropriate to build. You know, we only have 13 % commercial/industrial property here. We have sites that are over 24 acres that, if AvalonBay came into a low barrier community like this one wanted to buy at the amount of money I see is thrown at it, a lot like this would be built on and you could accomplish your purpose and would not take us down lower on our commercial/industrial land.

We just had a master plan and the master plan identified our commercial/limited industrial property. Basically, we're living up to that master plan. You're forcing us to change our way of living. I don't mind you changing my way of living, but should you be honest about the fact that the only high barrier is the fact that, and I call it and you'll forgive me for this for using the "Developers Annuity Act of 1969". you can bypass most of our controls in that. That's the real purpose of this. I don't fault you for using the law. What I do fault you for is stating that all you enter are high barrier communities. One of the communities you've got in here, or two of them actually, are above their 40B needs. So, they could turn you down on 40B. I don't know if they would. I think that, since their urban areas, they probably like this type of thing. I like this type of thing done correctly, but I'm not sure that you're being honest with us.

Mr. Roberts: If I could just put into context the "high barriers entry", basically what that means is that this isn't Texas.

Mr. Gordon: I don't understand that.

Mr. Roberts: In other markets, the southwest, the southeast, new developments are relatively easy to complete. In the Greater Boston Area and in the Commonwealth of Massachusetts as a whole, it is much more difficult. It's not getting any easier.

Mr. Gordon: So you don't try? You just go right to 40B and try to eliminate the community?

Mr. Roberts: Again, I'll be completely honest. That is really the main mechanism that allows for multi-family rental to get developed in the commonwealth, the vast majority. What we like to try to do is work within 40B, but do things like work with the town. I would ask you to contact any of the towns that we've dealt with. It's not an easy process. It's not an easy thing to do, but every one of the towns that we've dealt with, I think at the end of the day, everyone's been happy that at least we've made an attempt to work with the town to satisfy their needs.

In this particular instance, we have addressed the need to maintain commercial at least on the majority of the frontage on Route 20, lowering our density. We've also tried to accommodate some of the concerns of our residents by lowering the density, again. In the context of high barriers entry in the commonwealth, that's how we like to conduct our business.

Mr. Gordon: Okay, but you never go into a residential neighborhood or an apartment neighborhood zone-wise? You just go into commercial or a limited industrial? I'm trying to understand.

Mr. Roberts: A majority of the multi-family developments in the commonwealth are done through 40B because there are very few zoned multi-family sites in the Greater Boston area.

Mr. Gordon: Well, usually 40B in a residential site would have the same purpose.

Mr. Roberts: We've done that.

Mr. Gordon: Where?

Mr. Roberts: At Wilmington, twice, and in Peabody.

Mr. Gordon: I have a couple of other questions, if you've got time. I noticed in our booklet you talk about remediation at the Globe Texaco spot, which is the Bark Mulch spot and that a 21E has been done there and it's now acceptable for housing. Next door you bought the Rawlings Gear place. The Rawlings Gear place was in business in the 70's. They made metal gears. One of the major chemicals for washing metal was PCE, which is probably one of the worst carcinogens there is. I did not see a detailed 21E done on that property. We have none. I've got a letter from the health department saying that

we have not yet gotten the one showing us what you're telling us about the site being clean for building.

Mr. Salerno: That letter is dated June 24th, Mr. Gordon.

Mr. Gordon: Yes, I know. Also, on this site, I was a youngster who used to go to the diner there. Basically, part of the problem was that the tank trucks on their way to Marane off-loaded into the wetlands there. Have the wetlands been examined for heavy metals because you're going to be crossing the wetlands or pieces of it? So, my question to you would be, would you be willing to hire, for us, a consultant to review those 3 matters? The file exists at D.E.P. A new file would have to be established for Rawlings Gear and for the wetlands. But, I think it would be in your interest to have a clean piece of property when you take this over. I don't want to cost you any more money than you've already spent, but I do think it would be a good thing, a reasonable thing to have a party that you pay examine that land.

Mr. Roberts: I would be amenable to doing that. I apologize for the oversight. There has been a full 21E done on the Rawlings Gear Works site. As a large public company, we absolutely are required to do a very stringent review.

Mr. Gordon: Was it a Phase I though?

Mr. Roberts: It was a Phase I.

Mr. Gordon: Phase 1 is just looking at printed documents. They were in business in the 70's.

Mr. Roberts: Phase 1 with follow-up, with follow-up test pits, monitored wells. All the issues that you have mentioned have been studied at the Rawlings Gear Works. So, I would be happy to provide whatever resources necessary to make sure you have the comfort level that we do. Again, I do apologize to the extent that there was some missing information.

Mr. Salerno: When was that completed?

Mr. Roberts: I believe Rawlings Gear Works was the fall of last year.

Mr. Confalone: Again, the study showed no contamination?

Mr. Roberts: Correct.

Mr. Gordon: They used no PCE at Rawlings Gear?

Mr. Roberts: If they used it, it wasn't in the soils or the ground water.

Mr. Gordon: Was part of the testing done in the building?

Mr. Roberts: Yes.

Mr. Gordon: On the cement floor?

Mr. Roberts: The drains and all the dynamics of the building, yes.

Mr. Gordon: I'm surprised.

Mr. Salerno: So, that will be forthcoming to our health department? Will you send that over to them?

Mr. Roberts: Yes. I'm happy to provide whatever you need to get the comfort level.

Mr. Salerno: When will that be? When will that report be available?

Mr. Roberts: I can have all of the information available tomorrow. Any follow-up conversations or review we can do in very short order.

Mr. Salerno: We'll give you the fax number before you leave.

Mr. Roberts: Okay.

Mr. Salerno: Mel, do you want to keep going with your questions?

Mr. Gordon: Why don't you get back to me.

Mr. Salerno: Okay. Bridget has a question.

Ms. Murphy: It's part of the application. In reading the application, you talk about the water system. There's an indication that a flow test is necessary to confirm the capacity of the water system, whether it's adequate to serve 270 units, I assume. Was the test ever done and what were the results? How do we know whether there's adequate water?

Mr. Roberts: The flow test has not been completed. The development itself has been a moving target. Certainly that would be something that we would consider it contingent on for us being able to proceed.

Ms. Murphy: If it were inadequate, would the developer be willing to pay for the remediation?

Mr. Roberts: Correct.

Ms. Murphy: Okay. The other thing that was listed in the application was that you're requesting a waiver of all fees except those set forth in Schedule 1. I'm not sure what fees you're talking about. I don't know what the cost would be and I don't believe that the board has the authority to waive fees, unless somebody knows something that I don't know.

Mr. Salerno: Just those imposed by the other boards.

Ms. Murphy: But, it doesn't deal with fees and that's my concern.

Mr. Roberts: We had, as part of our LIP application, discussions as far as the permit fees and the connection fees and the various fees would be attributed, which we have agreed to and listed as you had mentioned. That sentence was added as just an indication that we have predetermined what the fees would be, which total in excess of 1.3 million dollars. Those are the fees.

Ms. Murphy: So, you wouldn't be looking for any type of a waiver from this board then?

Mr. Roberts: From a legal perspective?

Atty. Schwartz: First of all, let me just address your issue. This board definitely has the authority to waive fees under 40B. That's well established law. I think, just to second what Michael said, we negotiated with the town as part of the LIP application what the fees would be. The list that is attached as part of the application is pretty comprehensive. It goes into many types of fees.

Ms. Murphy: I saw those.

Atty. Schwartz: Many of those are the standard building fees. The building permit fee would be standard. We're not asking for waivers for anything like that. It really goes to more of the water and sewer, which was part of the approval.

Ms. Murphy: That is my concern that I don't know what fees you're looking for waivers of because there's not a listing of what fees you're looking to waive. Instead, you're suggesting we want a waiver of all fees except these that you agreed to pay. Since I don't know the others, I'm having trouble with this.

Atty. Schwartz: Maybe someone from the town wants to comment on that, but I think it was pretty comprehensive. The list that we attached as part of our application was a pretty comprehensive list of all of the fees and is a result of the negotiation and what Avalon will be paying as part of this project.

Mr. Salerno: This is all an itemized list of the fees that you're seeking the waiver from?

Atty. Schwartz: Well, the way it works is that we're seeking a waiver from the fees on a general basis and here is the agreement as to what the fees will be.

Ms. Murphy: Well, that makes me very uncomfortable. I need to know what it is that Avalon would be required to pay without any waivers and then what it is they are paying. I think without knowing that that, it is a difficult thing to review.

Atty. Schwartz: Well, I would just like to ask somebody from the town to comment on whether or not, in looking at the list, we can work with them. Obviously, the town knows the fees probably much better than we do and whether or not we missed anything.

Mr. Salerno: I think our town manager is going to address that.

Atty. Schwartz: Right.

Mr. Morgado: I haven't addressed the question because I don't want to cut into your presentation.

Mr. Salerno: Mr. Manager, whenever it's appropriate.

Mr. Morgado: What their discussion centered on is that Avalon will pay all the fees in accordance with the current fee schedules established for all inspections and applications and processes. What they asked for was relief on the water conservation fee and the sewer fee and the sewer I & I fee for those units which are affordable. That's \$1,000 per apartment for water, \$3,000 per apartment for sewer, \$440 per bedroom for sewer and I & I. What we've negotiated is an agreement for that. The value of that is based on a previous count of \$327,480. In exchange, Avalon has agreed to pay to the town \$336,000, \$168,000 to be paid to a gift account for the improvements to the Lake Park being developed and \$168,000 to be paid to a gift account for the construction of the new fire station.

Ms. Murphy: So, in essence, what it really does is it takes the money out of the general fund and puts it towards specific projects?

Mr. Morgado: What it does is, it diverts \$327,000 going into sewer and water and converts it to specific public improvements. The balance of the fees of \$986,440 will be paid into the sewer and water funds, respectively. So, the actual fees being paid are the same. It's just that, rather than going to sewer and water, \$336,000 goes into 2 specific projects. There's actually no net reduction of fees or improvement of fees. There's no real loss here, except for the difference between 336 and 327.

Mr. Gordon: How does this effect, in our sewer and water, the agreement that we have with the commonwealth that we can't hook anything up? We're going to be taking this much out of water and out of sewer from commercial businesses and putting it into here? How does that work?

Mr. Morgado: Well, it works because that's an agreement that the board is empowered to put into effect. The issue again is for the \$1,000 water conservation fee that was a fee that the state just put into effect. That's not really our fee. We're generating a great deal of revenue in that account. We're running 2 projects, the Lake Park and the fire station. Particularly with the Lake Street Park, we don't have a revenue source for that. As far as the sewer fee, again, we're generating a lot of fees in that area. Again, it's all going from one pocket to the other. It's all staying with the community, as opposed to going into water and conservation fund and sewer extension fund, it would be diverted into funds for the Lake Street Park and a fund for the fire station.

Mr. George: Has this site been tested for wells for servicing the project for irrigation?

Mr. Roberts: It has not been formally tested. It's our expectation to have wells for our irrigation. We haven't seen anything that would indicate that we would not be able to do that.

Mr. George: If for some reason that you do a test and you find some contamination on the site with the wells, what would you do for irrigation and watering on site?

Mr. Roberts: It's our expectation that we would be able to do that. If that is the case, we'll have to adjust our landscaping plan to help mitigate a need to irrigate. Our preliminary assessment, which is something we do in virtually all of our developments, is that we should be able to do that.

Atty. Schwartz: Let me just address that in terms of the conditions to permit. We would, in this permit as in many other permits in other communities, be willing to accept a blanket prohibition on the use of municipal water for irrigation. So, in a sense, that becomes our problem.

Mr. Salerno: In town, we have that bylaw.

Mr. Morgado: That's the current regulation.

Mr. Rosen: I have a question. The 168 and the \$268,000 that Mr. Morgado was talking about with regarding to what was negotiated as part of the LIP agreement, I read recently that you're developing a project in Northboro also. Is that also a LIP project?

Mr. Roberts: That is anticipated to be a LIP project.

Mr. Rosen: Is that a similar size to this project?

Mr. Roberts: It's larger.

Mr. Rosen: Much larger?

Mr. Roberts: Three hundred and forty-five apartments.

Mr. Rosen: About 20 % larger? My question is, unless it's not true, but I have read it in the paper recently that the negotiation with them is 2.6 million dollars for a senior center. How do you arise at exactly what you negotiate?

Mr. Roberts: That's a good question. It's a good sort of illustration of how every deal is different.

Mr. Rosen: What will be the differences?

Mr. Roberts: They're giving us land. So, that effectively is the purchase price for the land.

Mr. Rosen: I thought that it was a land swap. I thought that you were giving them back other land?

Mr. Roberts: Correct.

Mr. Rosen: So, it was an equal amount of land going back and forth?

Mr. Roberts: It's approximately equal, but the net result is a dramatic increase in our density, 90 units.

Mr. Gordon: You know we're building a fire station. It's going to cost us \$5,000,000. If you built it for us, it probably would be closer to \$3,000,000. I would like that number. I would think that's a terrific mitigation. Can't hurt for asking!

Mr. Roberts: We're very good at building apartments. I don't know how good we would be at building a fire station.

Mr. Gordon: I'm sure our fire chief could submit the plans to you and your guys could build it. I think what we've said is we're not sure that the amount of money that the town negotiated is adequate. We'd like you to show us why it is. We don't want to put your project out so that you don't have to go to that committee, but we'd like adequate compensation because you are going to have a dramatic affect. When the chief made his proposal at town meeting, he stated as one of the major reasons for the fire headquarters being there is the building down where you're building and not the only reason. And on that same proposal, and maybe there's a good reason that Ron was talking about Northboro, the list was that it would be 80 children. That's 4 classrooms. So, we'll probably need a school in that area one of these days. So, we're going to have some very severe capitol expenses. I'd like to see some of the burden taken off of us. Maybe you have a good idea.

Mr. Roberts: I guess I'd begin by stating that we have very much appreciated the last 6 or 7 months in working with the Town of Shrewsbury under a LIP program, which is "the friendly 40B program." So, you spend a significant amount of time up front with the town to sort of flush out all of the issues with the development, whether there's retail, how it's configured, what type of units and a mitigation package. We've had very frank and direct conversations that have gotten us to this point. I would say, as far as the fee structure is concerned, what you'll find in a lot of 40B developments is that the large impact connection fees are severely discounted or waived. We've had instances where those fees have been waived up to 70 %. What we've agreed to in this situation is to pay 100 % of the fees for the apartment homes. I would also add that there is an argument to be made for the reduction of fees for both in light of the affordable housing, but also these are apartments. They are not single family homes. So, our actual usage is much lower than what an actual single family home would be. So, we have agreed to pay the full fee in light of the fact that the use is going to be lower. This is all sort of part of the package that we've negotiated to get us to this point.

Ms. Murphy: I'm sorry. That's an interesting use of the phrase "we've agreed to pay the full fee." It is what it is. How could you not pay the full fee unless the town allowed you not to?

Mr. Roberts: We could argue that it's affordable housing.

Ms. Murphy: It's a great argument, but where's your leverage for it?

Atty. Schwartz: The Housing Appeal Committee.

Mr. Roberts: Frankly, that's out there, but that's not how we like to do our business. We want to be aboveboard, upfront and have good faith negotiations and come up with a package that acceptable to the town.

Ms. Murphy: Excuse me. There may be some precedent for it, but I'm just not aware of the Housing Appeals Committee requiring a community to lower their fee structures that have already been established, but counsel you might be right.

Mr. Rosen: I can see for a limited distribution entity or a not for profit, but not for "a for profit" entity. I'm assuming that AvalonBay, Inc. is going to end up owning this property?

Mr. Roberts: Correct.

Mr. Rosen: So?

Mr. Roberts: But, effectively, we are going to be a limited dividend organization, as Steven mentioned.

Atty. Schwartz: I mean, I think the issue there is, just to follow up on what Mike was saying, that this is intended to be a friendly 40B in the sense that, not just for the town staff, but the selectmen endorsed this proposal. That's the basis on which we propose things. The proposal would probably be different, frankly, if we hadn't gone through that process because we would have anticipated a negotiation on these items as part of this process. But, that is the direction, I think, with the encouragement of the town, that we chose to go in. Hopefully, the board can see that and we can work on that basis.

Mr. Gordon: Well, now we know what really is happening. Okay?

Mr. Salerno: Long term?

Mr. Gordon: Long term, yes.

Mr. Salerno: All right. Let's see what we have. Are there any further questions from the board before we open it up?

Mr. Rosen: I don't know if anybody asked it, but explain to me why I've got Avalon Arbor expiring at 305. That's 330 units?

Mr. Gordon: Three hundred and five units?

Mr. Rosen: Three hundred and five units expiring in 5 years. I'm still at a loss on what the actual benefit, in terms of obtaining our 10 % threshold, is from this project. You're only giving us a 5 year window. You say it's a separate project, but frankly, I don't believe that. You control the mortgage, you control the projects. So, the fact that, just because you say it's a separate project, I don't buy into that. So, I want to know why, again 5 years down the road, the town is in a worse position than we are today?

Mr. Roberts: I guess my position is that we are not willing to tie the 2 together.

Mr. Rosen: Which is different than saying that they're unrelated entities.

Atty. Schwartz: Let me just say that I don't think that, with this project, you should be worse off because of the existence of Avalon Arbor and the existence of the expiration of that period.

Mr. Rosen: I'm saying that our town is worse off.

Atty. Schwartz: Well, what I'm saying is that, if there was a separate applicant who was proposing this development, that issue would be irrelevant.

Mr. Rosen: It would be irrelevant.

Atty. Schwartz: And my point would be that I don't think Avalon, which has a proven track record in this town and other surrounding communities, should be tied to those issues for 2 separate projects, which have their own issues. I think that that's not a proper way of viewing the issue, with all due respect.

Mr. Rosen: Other than the fact that it is the same ownership?

Atty. Schwartz: It's not the same ownership.

Mr. Rosen: The same control. It is the same control.

Mr. Roberts: I guess my other point would be, regardless of the outcome of Avalon Arbor, this development getting built or not getting built means a net increase of 264 units.

Mr. Rosen: For 5 years.

Atty. Schwartz: No, this development will be perpetual.

Mr. Rosen: No. I understand that, but then I loose 305 units in 5 years.

Atty. Schwartz: That will happen in any event, in all likelihood.

Mr. Gordon: Are you stating that as a fact?

Atty. Schwartz: I'm saying, as it currently stands, that's the way it looks. A lot of things can happen between now and 5 years from now. What I'm saying is that that's not an issue before this board, I don't think.

Mr. Roberts: I don't want to be misleading here or be confusing. We just simply are not willing to tie the 2 together regardless of how you define the entities. Frankly, there's too much at stake.

Mr. Rosen: Specifically?

Mr. Roberts: Specifically, the value of the added units.

Mr. Rosen: Avalon Arbor's?

Mr. Roberts: Yes. The value of the conversion of those affordable to market. I'm assuming the Town of Shrewsbury will do everything they can to prevent that and I'm assuming that AvalonBay will as well to do it.

Mr. Salerno: Let me interrupt you. How are you going to prevent that?

Mr. Rosen: The question I have then, too, is I notice that you're foreclosing on Avalon Arbor, which is a 10 ½ % mortgage. You can get a HUD mortgage that would get you less than that which would tie the units to be affordable for a longer period of time. So, basically what you're doing is that the investors in Avalon Arbor are taking a hit, basically, for the benefit of AvalonBay because you keep an artificially high mortgage which does let those units expire. You're creating the situation yourself. If you were actually to go get a market rate mortgage, which would probably be through HUD, those units would probably be in perpetuity. So, you're creating the situation. So, that's why I say when you tell me it's a separate entity, I don't buy into that.

Mr. Gordon: I've got another question for you, Mr. Roberts. When we spoke last, you said that none of the apartments are built specifically different for the affordable as opposed to the market. So, that means that all of the apartments could be rented as market at some time in some future if it were allowed. Is there something different about the Arbor that we don't understand? Are all those apartments that are there the same? Are some of them different?

Mr. Roberts: It's the same program.

Mr. Gordon: The same program, okay. So, basically your plan is that those will all go market rate and further lower our inventory and raise the rentals here? Is that a safe statement?

Mr. Rosen: It would certainly give it a higher market value.

Mr. Roberts: Yes.

Mr. Gordon: Because, that's what's going to happen.

Mr. Salerno: There's no way to put any conditions on that other development?

Mr. Gordon: We don't know yet. We could be creative.

Atty. Schwartz: That won't be an acceptable condition, Mr. Gordon.

Mr. Gordon: I didn't say that it was going to be a condition. I just said that we had to be creative. But, I think at least we've flushed the friendship out of the relationship.

Atty. Schwartz: It's unfortunate that you feel that way.

Mr. Gordon: I think that, yes, we have your friendship and I use that advisably, on 264 apartments, but we have your angst or your business sense on 305 apartments. So, we're going to go from 4.36%, and at some time, it will probably be down to 3.95% or somewhere in that neighborhood. If this was a friendly, I would think that there would be someplace where we could talk, not tying them together, but on some method of our maintaining at least our 4.39 over some longer period. I would think Avalon would be interested in something like that to keep it all friendly.

Mr. Roberts: Yes. Again, I have been very appreciative of the aboveboard discussions we've had leading up to this hearing. I appreciate your concerns regarding Avalon Arbor. But, just to sort of put it into perspective and for me to be straight forward, if I'm doing my math correctly, and I'm rounding here, it's 300 units. Say 25 % of them are affordable. That's 75 units that are at stake here.

Mr. Rosen: Well, it's 300.

Mr. Gordon: It's 300.

Mr. Roberts: As far as the pure economics are concerned, the difference between the income we could receive as a market unit and the income as an affordable unit is probably about \$12,000 a year. So, that income is probably worth, rounding, \$150,000 per unit of value.

Mr. Salerno: You're saying the rental values in those units, when you completely clean that entire site and put it at market rate, is going to change by that? You're not going to increase the rates over there, the rentals that are there?

Mr. Roberts: No. To convert from affordable to market, we would. The value of that is \$12,000,000. So, as a public company, our board of directors, our shareholders, will say that if there's a potential based on the actual permitting that took place whenever, 12 to 15 years ago that allows us to get that value, I'm being straight forward, we're going to try to gain that value. But, again, it's all in the context of how that community was permitted back then.

Mr. Rosen: I just have one more comment, more of a housekeeping issue. Both of your final statements have long based financials. I noticed just something listed in the balance sheets about security deposits. I noticed that your liability exceeds the asset by \$12,000,000. Isn't it a requirement that they be fully funded?

Mr. Roberts: For Avalon Arbor?

Mr. Rosen: No, for AvalonBay. I believe in Massachusetts, whether it's a private entity or a not for profit, the security deposits need to be fully funded with a cash account.

Mr. Roberts: And interest, yes.

Mr. Rosen: Well, it would still offset. The interest would offset the liability. But on one of your financials, I'm looking at the assets which are understated, it is \$12,000,000 below the liability. So, my question is, how could that happen? Am I just to infer from that that other states don't have the requirement that Massachusetts does?

Mr. Roberts: I would be willing to guess that Massachusetts is probably one of the few states that have that requirement.

Mr. Rosen: Okay.

Mr. Salerno: Okay, a lot of these people have been patiently waiting to get some questions answered. We'd ask that those residents that have come here this evening and have questions of this petitioner and/or the board, we would like to open it up to you at this point with the same rules in place that we said at the beginning of the meeting. So, if anybody here in attendance wants to inquire, let's do so now.

Sir, just identify yourself for the record and state your question.

Mr. Murdock: I'm David Murdock. I live at 19 Waterville Lane in Shrewsbury. I live in the Southwoods Subdivision that will be abutting that property. Mr. Chairman, thank you and the board, ladies and gentlemen. Thank you for your time. I know there's been a lot of it tonight so, hopefully, we won't keep it.

We, as a community, have been meeting quite a bit ourselves, obviously based on this project. As a result of the 40 or so plus homes that live and will be abutting this property, most of them are here tonight, we've tried to voice our concerns through maybe 1 or 2 people speaking, one of which is myself, to try to ask the majority of our questions and our concerns versus having 40 people keeping you here well past midnight. Hopefully, you can appreciate that.

Mr. Salerno: We've done it before.

Mr. Murdock: Okay. Well, I'm just one of those many. We're happy to continue that tradition.

Obviously, we understand that this process clearly is just beginning in terms of the approval through this board. There have been, obviously, a number of meetings that Avalon and the town have had. We share and appreciate, I think, a lot of the concerns that you have brought up tonight. I think what I would like to start off with is really sharing with you our concerns so that you hear for the record what it is that we the abutters believe to be our main issues with the project.

Mr. Roberts and his firm have been very, very willing to work with us. They've had meetings with us particularly, I think, the results of the revised plans which a lot of that came from some of the issues that we shared with them. But clearly, you as a group, you have not heard those issues. I think that it's important that you raise that and I'm going to pose a question from that.

As abutters, our concerns primarily deal with the following things. Number 1, the buffer zone and how far apart from development that it is being proposed to our property and our property lines and our homes and how close in proximity that is. I mean, clearly, you've seen so many of these things. You have not walked the site. I think it was an amazing alarm to Mr. Roberts the night that he came over to our property, walked in our back yards and started seeing how close that truly is. One hundred feet, one hundred and fifty feet, is not a lot of space.

Mr. Salerno: Wasn't it stated earlier 200 ft. to the closest foundation? Is that the number that you gave us?

Mr. Roberts: No. The general buffer is 100 ft. This is approximately a 100 ft. line. Then, as it relates to this building, my statement was that the building to our property line is about 150 ft., probably 200 ft. foundation to foundation. But, in context of talking about buffers, I would say that it's 150 ft. to the property line.

Mr. Salerno: Okay, just so that we have the same numbers.

Mr. Roberts: Yes.

Mr. Murdock: I agree, Mr. Chairman. It hasn't been walked off. It clearly hasn't been listed as an exact item of their plan. But, the point is that we are concerned on how close these buffer zones are and the proximity of the proposed development, not just the buildings, but the parking spaces and everything else, how close that is to our space.

Secondly, we're clearly a home of not inexpensive homes. These are homes that range in the \$600,000 to \$700,000 plus area. We would be very concerned about the potential decline in property values with having an apartment development there. We moved into our home, they're all new homes, about a year ago. More than likely we would not have chosen to move there if the apartment development were proposed. We would have been told that. So, we clearly can't magnify what those potential losses might be in the future if they are. It is a concern.

Mr. Salerno: Who would have been the one to tell you that?

Mr. Murdock: I would have thought our builder, our real estate agent or the developer for the property would have informed us and made proper disclosures of any proposed sites or any proposed sales of those properties abutting ours.

Mr. Salerno: Have you looked to them?

Mr. Murdock: Well, that's a very good question. We have tried to make arrangements to speak to those individuals. Clearly, sir, we have not gotten very far. But, that's a concern.

I think we share your concern about traffic as well. I would point out, not just at intersections, but the actual traffic on the streets. This is a location very close to the train station, as most of you might know, on the Westboro line which you can access very readily off of Walnut Street. Right now, it's extremely difficult to turn left off of Walnut Street or, if you are using the Y, I don't know if you've ever gone to which is a one-way, you have to make u-turns there. It's almost impossible sometimes to turn off of South Street going left because you cannot see the ongoing traffic due to the vegetation and the trees. Clearly, as you think about not just the intersection, but the ongoing traffic that's going to happen and the fact that our children get picked up from bus stops there on Walnut Street. People already exceed the speed limit that's posted at 25 magnifying that. That's clearly a concern of ours that we share with you.

We have concerns about safety. If not every one of us who live in that subdivision have young kids. My children are under the age of 7. The majority of them are under the age of 5. I would say this is a concern of ours to have as many people, 600, 700, 800, 1000 people living in a community right behind us clearly poses a concern for us, the safety of our children and the fact that they will be so close to us.

I think lighting, which Mr. Roberts has started to address, clearly is another concern of ours as to how much lighting that's going to be. We are so close. The fact that it's going to shine in our windows is a concern. As the elevation goes upwards in one direction, it continues to go up to our subdivision. Many of our neighbors look above our houses. So, they're clearly going to be looking down at this proposed development. The lighting is just going to be a nuisance, if anything.

Finally, and I think one of the biggest concerns for those of us, myself included, who live directly on the property line, is the elimination of the wooded areas and the undeveloped land that is clearly already there behind our homes, be it the wetland areas, be it the current wooded areas. Much of that, if not a good majority of that directly behind this, is now going to be gone. The proposed development clearly is going to have to clear those items for buildings, for streets, for parking, for all of those uses that they obviously need if they get this site approved with the space and the density that they have. That's a tremendous concern to us because, again, many of us bought the homes thinking that this was going to be property that was going to remain a mulch place and the trees were going to be there. We were clearly told that there are wetlands behind us. They can't build within 100 ft. of that. This clearly is encroached well within that. So, that's another major concern to us.

So, as I round all of that out, my question to you, and I have a number of them, but my first question to you is what is the board's position in looking at our concerns? I have heard a lot tonight about the questions you have raised and, speaking with the town, the questions they have raised and working with Avalon up to this point, none of those were concerns about the abutters who live there. They're concerns about the town. They're concerns about the traffic, the fire, all of those other things. I think that, as Shrewsbury residents, we're concerned about that as well, but as abutters, we're concerned about a number of other issues. I don't see anybody fighting for our rights. Mr. Chairman, you started out by saying you work and you're an advocate for the residents of Shrewsbury. We are residents of Shrewsbury. We are also tax payers, just like the proposed development would be. My question to you, at least my first question to you, is what is going to be your view? What ways are you going to help us to address the concerns that we have?

Mr. Salerno: Well, we're going to have to work, first and foremost, within the framework of 40B. I'm sure you've done your homework on 40B and how it limits this board's authority.

Secondly, when inquiries are made as to traffic, fire, all those inquiries are made with the concern of the neighborhoods. Certainly, the board members are viewing that from the viewpoint of you people, the abutters in the neighborhood, because, above and beyond that, it impacts services across the town. But, more specifically, there were a number of questions about traffic. There were a number of questions by Mr. Gordon about 21E issues and the type of affects that would have on your neighborhood. So, in response to your question where is the board coming from, it's from the same neighborhood that you're coming from.

Mr. Murdock: The second question I have, and I know it's the concern of a lot of us, has the town looked at any other sites for potential 40B applications? As clearly as you've stated, there's been a master plan put together. There are more than likely plenty of other properties available. Why is it that this site was chosen as an optimal one from the town because it clearly seems to be that, or they, wouldn't be working with the AvalonBay Communities under a local initiative unless they felt that this was one of the more optimal sites? Our question is, have they looked at other properties? If not, why not?

Mr. Salerno: I would turn to other board members because we're not involved in that decision making.

Mr. Gordon: I think that is Mr. Morgado's answer.

Mr. Morgado: I'm Dan Morgado, Town Manager. We didn't pick the site. We didn't pick the developer's site. The developer comes to us and says we have a proposal. We have these meetings regularly. There are other 40B projects that we're talking to people about. We don't have the ability as a town to decide who does these and who doesn't. The law, I'm sure you've reviewed the law, doesn't put a whole lot of ability of the town to do a whole lot about these. What you do is you deal with them as they come and go and you try to do the best you can with what you have. This project and this development team came forward and we met with them like we meet with every other

development team. They were responsive and they proceeded to submit the application. That's why we're here today. But, if this project were to not go forward, there are other projects being proposed because 40B is the way developers build housing because of, you've got the proformas, because of the financial. The money's there. You heard Mr. Roberts mention that, by moving the other Arbor project out of affordability, it puts \$12,000,000 to them. So, these are developments that generate a great deal of cash.

Mr. Gordon: If I might suggest from the things that you've mentioned, and I sympathize with you, that I think the exclusive real estate company for that project was Carlson GMAC and then the 2 developers, Giblin and Moss. I would wonder at the time that you were told that there was going to be nothing built behind it, and I know that unless it's in writing most times, what is it commercial code?, you're probably limited. But I would inquire as to whoever told you this. If you can have enough people that had the same thing, there are errors and omissions policies that these real estate companies have. If you can show a loss, you may have the ability to have one of them mitigate your loss somewhat. I don't think that's a promise, but the realtor advertisement tells you how honorable and aboveboard they are. Maybe they're willing to stand up. We have the same concerns, but we have very limited abilities as the manager said.

Mr. Murdock: Right.

Mr. Gordon: I think I said it earlier that the current 40B is a small circle of friends who do most of the work. It is truly, as you heard from the numbers, the Developer's Annuity Act of 1969. So, we'll try to do what we can. Yes, we do hear you because we live here and we live on the same streets that you live on.

Mr. Murdock: Well, I appreciate the thought. Clearly, that won't stop the project, whether we get mitigation or not. Our concern is to work with the town and work with Avalon, if possible, to really be looking at these things.

I've got another question that I have here that, again, is a concern. As we look at the application that Avalon has filed, as Ms. Murphy had noted, there is a blanket statement that says they request a waiver of all town fees. But, if you look at the statement right above that, the applicant is requesting a blanket exception from a host of a number of unwritten or un-notified zoning laws and other applicable bylaws, regulations and local requirements of the Town of Shrewsbury. We would be very concerned as to what those requirements, those bylaws, what those regulations are that they're requesting this blanket approval from. As we generally look over the list of exceptions, which they have a spread sheet of, the majority of these appear to be exceptions around dimension requirements that they have. But clearly, we know there are many other requirements through density or other things that the town has and, obviously, has built in. So, our question is, much like what is the list of all these fees that are going to be waived, what is the list of all the applicable bylaws, regulations and local requirements of the town that they're asking to be blanketly waived as well?

Mr. Kyriacou: Andrew Kyriacou, 24 Waterville. We ask that Avalon actually put down all of those exceptions. We understand that it's not for the town to be burdened with that. We would like to see as to just what those exceptions are. Just as Ms. Murphy pointed

out in terms of fees and what are those fees are, we want to know what those other exceptions were. We did not see that in the application.

Atty. Schwartz: Well, I think what we intended to do that with this list, which is a pretty standard practice. We actually identified the zoning exceptions that we believe we need based on a review of the zoning. We did a review of other town bylaws. If we had identified something, rather than burry it in a catch-all, we would have identified it. We haven't identified anything. Really, this is a kind of standard request that, to the extent that we build this project in accordance with the submitted plans and approval of this board, will govern the project as is the case under 40B. That's really the intent of that language, not to hide or bury requested exceptions.

Ms. Murphy: Could I just comment? I viewed this table as the request for exceptions and that these were the only exceptions that you were requesting.

Atty. Schwartz: These plus the fact that the multi-family use in these districts, at least at this density, is not allowed. Those are the only zoning exceptions that we're aware of that we're requesting relief from.

Mr. Salerno: Should any others arise, you've put in the protective language?

Atty. Schwartz: Yes, should any others issues arise from various town bylaws that we're not aware of based on our due diligence. What we're saying is that the plan will govern. This approval will govern.

Mr. Salerno: Yes sir, again your name.

Mr. Kyriacou: Andrew Kyriacou, 24 Waterville. One other question, in terms of, may I approach?

Mr. Salerno: Absolutely, sure.

Mr. Kyriacou: Thank you. I have one question, actually, sir. When you did the traffic, did you take into account what is the proposed on Walnut in terms of a 50 years and older development going in and this happening with another development of housing that is proposed there in terms of what that would be in terms of an affect?

Mr. Hall: Right. We projected traffic 6 years out, the building year plus 5. We grew traffic 2 % per year, which is standard and consistent with what counts in the area the reports show. In addition to that 2 % per year, again for 5 years, we added all the approved projects that we were aware of to the traffic.

Mr. Kyriacou: I apologize, but maybe I did not hear it. I understood that you went through the whole Route 20 in terms of what the affect it had on Route 20, but what about Walnut. It has been pointed out that there is a train station. People actually take that road. There is lots of traffic. The road is very narrow so I was wondering is there anything to be done on Walnut Street and also entering and exiting here. There will be

lots of traffic both from your development as well as the other developments that are being proposed.

Mr. Hall: Well, as this plan shows, there's the office park proposal up here. We'll put a signal here. Then we'll create a left turn lane into Walnut Street. So, there are basically 3 or 4 lanes there. Our project mitigation would start west of there before it tapers back down to 2. We would just keep it at 3 lanes coming across and meet the 3 lanes that exist to the west of the site.

Mr. Gordon: Did you review BCS's numbers?

Mr. Hall: Yes. They're included.

Mr. Gordon: They're included?

Mr. Hall: They're included, yes. Our study stopped at this intersection. We didn't go down Walnut Street.

Mr. Salerno: Go ahead sir.

Mr. Murdock: Again, David Murdock. Thank you for the questions so far. Another question I have is that it is very clear that there's going to be additional meetings or things that are going to occur. You've raised issues through traffic studies, through school, through the engineers, the health safety department. Are these sessions going to be public, open sessions that we can, again, attend? Are they going to be announced and provide to us a schedule?

Mr. Salerno: The particular boards that will hold it advertise. We're obligated to advertise. I think it's 14 days, Ron?

Mr. Alarie: No. If you adjourn this meeting, we would have to post it 48 hours in advance of any additional hearing.

Mr. Gordon: But, we don't have to advertise it, we just have to post it?

Mr. Alarie: We don't have to advertise. You technically do not have to re-notify the parties in interest. It would be at the board's pleasure to do that.

Mr. Salerno: I think his concern was about other committees. Are you talking about other boards?

Mr. Murdock: Not just this board meeting, but others.

Mr. Salerno: I can only talk to you about this board.

Mr. Murdock: Okay.

Mr. Gordon: Every board that's a public board must notify the abutters the first time. So, if you are an abutter, you would be notified on any public hearing unless it's an informal public hearing.

Mr. Murdock: So, are there going to be proposed informal public hearings with this board that is here in front of us today that we would not be notified about?

Mr. Salerno: No. This is the only matter on this agenda. We'll either, depending on what happens, close it tonight or continue it. Action has to be taken or it happens by operation or 40 days. Counsel?

Atty. Schwartz: After you close the hearing, that's correct.

Mr. Salerno: So, it's 40 days. Again sir, just for the record.

Mr. Kyriacou: Andrew Kyriacou.

Mr. Salerno: I think it knows your voice, but I just have to have you state your name.

Mr. Kyriacou: First, I want to thank the board. I know you guys spent a lot of time. When I first moved to Shrewsbury and saw all of you on TV, you all actually look a lot lighter than on TV.

Mr. Salerno: Does Mr. Gordon look thinner?

Mr. Kyriacou: My wife probably sees how heavy I am right now! I have a couple of questions. Thank you very much for letting me speak. This is where it goes back to what was spoken about helping us as abutters. Even though I'm not technically an abutter, I understand about the retail space and your concern that, if it's not used as retail space, that they may go in with other housing.

The question that I have for the board, as well as to give some thought to, is getting rid of the retail space and let's start clean. I know that everyone is shaking their head because I understand about moving some of this to that area. That's something, in terms of for us, that would actually help in terms of sight view and looking at that. That is just one thing we did discuss, if that is possible.

Number two, in terms of density, and I have a question for you sir.. In Newton, you say about how many units?

Mr. Roberts: Two hundred and ninety-four.

Mr. Kyriacou: It's about roughly 264 here. What is the square footage of the whole area for that development?

Mr. Roberts: Two hundred and ninety-four units on 7 acres.

Mr. Kyriacou: And how many acres here?

Mr. Roberts: Twenty-five.

Mr. Kyriacou: How many stories?

Mr. Roberts: Four stories.

Mr. Kyriacou: Okay.

Mr. Roberts: Actually, I think we have a picture of it.

Mr. Kyriacou: I have one other question in terms of lighting. I understand, because I've been through Flanders and I think it's the same lighting as in Flanders that you're proposing?

Mr. Roberts: It is.

Mr. Kyriacou: It's very nice lighting, but still it's white halogen lighting. The question becomes, in terms of lighting, there is yellow lighting which you can be putting in, I don't know, based on the town. It actually looks not as bright with certain yellow lighting. Actually, there is down-lighting as well, the same as this type, but it would be yellow. So, from our view, in terms of what David has said, there are a number of homes on the other side in which the levels are even greater for them to be looking out over the white lighting. I understand that this is a lot more inexpensive in terms of the halogen. That was a question we had as well.

Fourthly, if you can give some thought in terms of fencing. I understand that it's a 6 ft. fence that the town allows, I believe. The question is. how high the berm can be in terms of raising the fence?

Mr. Gordon: Mr. Alarie, what's the height of a fence?

Mr. Alarie: There is no limitation only that, if you exceed 6 ft., it requires a building permit.

Mr. Kyriacou: That's something that maybe we could be working with in terms of a higher fence, something tastefully done. I know the size of the highway's, but they probably won't look that way. I understand that cost is a factor. That goes to safety because I do know that there have been a number of articles written, I believe, in the Marlboro versus Southboro in terms of children running through neighborhoods. There's been a lot of press on that and the neighbors are very upset. So, in terms of security and also our privacy, we would be looking at fencing that is higher than the 6 ft.

Thank you for your time.

Mr. Gordon: Mr. Roberts, on your lighting, are you going to put shields on so that the lights don't go toward the houses and just go toward the apartments?

Mr. Roberts: Correct. The specification for the lighting is such that the light goes downward as opposed to outward.

Mr. Gordon: Will there be shields on the residential side, residential being Tralee and the other people there?

Mr. Roberts: Yes and there are certainly things that you can do at particular areas of concern to further insure that light doesn't travel through the buffer zone.

Mr. Gordon: Well, we can talk about that. Thank you.

Ms. Garrity: Mr. Chairman, my name is Mary Garrity, 27 Waterville Lane. I'm very enthusiastic to have the opportunity to speak, particularly after hearing Mr. Roberts say that this project had already been endorsed by our elected selectmen. I wonder, is it a matter of public record or can we make it a matter of public record who is currently the landowner of that?

Mr. Salerno: It's under a purchase and sales, correct counsel?

Atty. Schwartz: Yes.

Mr. Salerno: So, an offer sheet has been made and a deposit placed on it? Is that accurate?

Atty. Schwartz: Yes.

Mr. Roberts: That's correct.

Mr. George: It's A.J.A. Realty?

Ms. Garrity: A.J.A. Realty, thank you.

Mr. Gordon: There are 2 others, I believe.

Ms. Garrity: And, they are?

Mr. Gordon: One is Robert Moss and the other is Brendon Homes and Kevin Giblin.

Ms. Garrity: All 3 of those organizations currently own that property?

Mr. Gordon: I don't know if they all own it.

Atty. Schwartz: Mr. Gordon, I don't think that's correct. The owner of the property is A.J.A. Realty Corporation and an individual named Gary Alcock.

Mr. Gordon: Okay, but there's also a purchase and sales that mention the others?

Atty. Schwartz: Those people, the record title is A.J.A. and there are some other easement issues.

Mr. Gordon: So, they're other agreements between you and them?

Atty. Schwartz: Correct.

Ms. Garrity: So then Brendon Properties has control over the land, even though on paper he doesn't own it?

Mr. Gordon: I wouldn't say he has control. I would say he has influence.

Ms. Garrity. Thank you. If I might ask a question of the board and you can ask Mr. Roberts or I can ask him directly. Mr. Roberts referenced several times in the beginning of his presentation that this is a second proposal. After speaking with the neighbors, they felt that they wanted to increase the buffer down at the left side of the drawing there. I wanted to make it a matter of public record, and I'm sure counsel will correct me if I'm wrong, I believe that in the agreement for the purchase and sale you must have a 100 ft. buffer from lots 23 to, I believe, 29? I think that that might be the reason that that proposal was re-designed. Am I correct?

Atty. Schwartz: Sort of. The short answer is there is an agreement in that purchase agreement between 2 private parties that a 100 ft. buffer would be maintained, but it's not a deed restriction or runs with the land. So, in fact, those parties could modify that agreement. I don't know if that answers your question? So, there is such a provision in the contract, but it's not a deed restriction.

Ms. Garrity: So, you're saying that it's not a deal breaker?

Atty. Schwartz: I'm saying that it's a private agreement between 2 parties who could modify it. But, in the spirit of adhering to that agreement, Avalon is maintaining that buffer.

Ms. Garrity: Correct. In the original proposal they did not maintain the 100 ft. buffer. But, I believe one of the people you are speaking about made a phone call and then the 100 ft. buffer was put into the project and that's what brings us to this second proposal, not so much the concern with the residents.

Mr. Roberts: If I could just take a moment to address that. I guess the 100 ft. buffer, it was our understanding the way that it was sort of given to us, and this is the original proposal, sort of ran along here and then did this. Depending on how you interpret the 100 ft. buffer and where it exactly continues. That, combined with the fact that we went out there, frankly, I stood right there and understood that this is much more invasive and intrusive than we thought. So, I would say that it's a combination of re-interpreting and investigating the 100 ft. buffer. We're trying to make changes that help. Certainly, moving this from here to here had nothing to do with the 100 ft. buffer. Reducing this from 3 stories to 2 stories had nothing to do with the 100 ft. buffer. It's an attempt to address some of the issues that we talked about.

Ms. Garrity: The other question is a quick yes or no. Do you know if pets will be allowed at this particular rental community?

Mr. Roberts: When the market's good, no. When it gets soft, we tend to allow small pets. I think our current policy at Avalon Arbor is a cat which has limitations and a small dog.

Ms. Garrity: You were actually down to Route 20 and conducted part of that study on site? Is that correct?

Mr. Hall: I'm sorry?

Ms. Garrity: This is a question to, I believe you're Rizzo and Associates.

Mr. Hall: Right.

Ms. Garrity: Are all of your studying numbers analyzing or did you have any of your study done on-site in that Route 20 corridor?

Mr. Hall: You mean traffic counts on Route 20 or do you mean internal circulation traffic?

Ms. Garrity: I'm not familiar with those terms. I'm talking about, did you have some kind of equipment down on Route 20 actually counting cars?

Mr. Hall: Yes.

Ms. Garrity: So you did, okay.

Mr. Hall: Yes.

Ms. Garrity: I'm quite sure my vehicle is part of your study because I travel Route 20 from Lake Street to Walnut Street probably, I would say, 20 times a day. My question is, you mentioned that you did it in February, 2004. Was it a one day thing or the course of time?

Mr. Hall: We counted over the course of 3 days. We measured traffic volumes and speed as well.

Ms. Garrity: I was just curious what the weather was on those 3 days because I know that bad weather could have kept the traffic down.

Mr. Hall: Sure. I don't recall. I could certainly try and find out, go back and find the exact dates and see what the weather was. I can tell you that on a weekday there are roughly 17,000 or 18,000 cars a day on the road. On a Saturday it's less.

Ms. Garrity: I just know that a lot of those charts and all of those numbers aren't going to mean a darn thing when a senior citizen, a minivan full of kids or a teenaged driver

makes a left out of Walnut at Willow Curves and gets slammed into by a semi trailer going 50 to 60 miles an hour. So, traffic is a huge, huge issue because that's not just a regular road, it's a state highway and those cars are traveling at extremely high speeds.

My last thing is that I was actually in front of the ZBA several months back putting in an inground swimming pool.

Mr. Salerno: Did we allow it, by the way?

Ms. Garrity: Yes, you did thank you. So, I now have a lovely, lovely inground swimming pool 8 ft. from my rear property line, which means that people swimming in my swimming pool will be 108 ft. from town homes. So, I would echo the importance of fencing because I know, Mike, you were very concerned about the safety of your residents and having an inground swimming pool so close to many of your units. I'm really hoping that a fence will become part of your drawing.

Thank you.

Mr. Abram: Peter Abram, 21 Waterville Lane. I'm one of the abutters. I had a question. This goes back to kind of the buffer zones that we talked about. When we were at the hearing that they had for the delineation of the wetlands, the question I guess for Mike is, not only are they crossing the wetlands there, but when we were in front of that board, that board said "Look, we have an unwritten rule in Shrewsbury that, within 60 ft. of wetlands, you need approval from this board and we generally don't ever approve anything that's within 30 ft. of those zones." When we talk about the buffer between our properties, there are a number of cases in these drawings where they encroach even within the 30 ft. zone. So, I guess the question is, why do we have so many of those and why aren't we staying away from those wetlands a little bit more?

Mr. Roberts: It's our understanding that the rule of thumb is no buildings within 30 ft. Our revised site plan removes any of the encroachments that were included in the initial submission.

Mr. Gordon: Is this covered at all by the Rivers Act? This is a major brook, Bummet Brook. Are we sure that this isn't covered by the Rivers Act?

Mr. Liston: Mr. Gordon, Andrew Liston. Part of the resource determination under the conservation commission's filing was that there was no river in that area. You have a long standing culvert that passes not only parallel to Route 20 and you have non perennial flow in the balance of the stream as far as I understand the ruling. I don't have the hand read decision here, but there were no River Bill interests that ensued from that filing that ended up in the design phase.

Mr. Gordon: Okay. Can we get a copy of that? Mr. Chairman, can we get a copy and make sure of that?

Mr. Salerno: Yes.

Mr. Abrams: I have one other question just in response to what he said. He said that, in the new revised planned building, but also in the parking lots and those types of structures. The roads and the parking lots are also in that buffer zone, I believe?

Mr. Roberts: I believe the parking as well, where it may have encroached in the former plan, has been revised to stay within the town's rule of thumb.

Mr. Abrams: I have one other question, Mike. I guess you really didn't speak for the record. We had heard earlier tonight that Avalon Arbor is close to bankruptcy and is no longer owned by AvalonBay. In all of the literature and when we met, AvalonBay was in the business of developing and holding, for long term, their properties. We see even within our own town a case of where AvalonBay sold their property. It's now in bankruptcy, which I assume will continue. The upkeep on those types of properties after they're sold, there's no way to know what will happen.

Mr. Rosen: Just a correction. There's no bankruptcy. They were in default on the mortgage. They missed the mortgage payment.

Mr. Abrams: What I'm saying is something was said that, because they were in default of their mortgage, the next step could be bankruptcy.

Mr. Rosen: It would be unlikely because they hold the paper. So, they're not going to force it into bankruptcy. It wouldn't behoove their financial interest to do that.

Mr. Abrams: But, I guess I would like to hear from him what their longer term intentions on this property. I mean, AvalonBays are very nice looking. They take good care of them. I've lived in an AvalonBay temporarily when I was relocating around the country. The question is, when they sell this property, there's no control over how it looks after that. I would like to know from their perspective what their long term intentions are on this specific property.

Mr. Roberts: With Avalon Arbor, I guess I need to apologize. I need to get more up to speed with the particulars. I can tell you under the intent of full disclosure, we own the debt. The equity is owned by Trammel Crow, which is our predecessor company. So, it's more of a friendly issue.

Mr. Gordon: Their the landlord and you're the tenant?

Mr. Roberts: Yes. However you want to describe it. It's a financial situation that was part of us going public 10 years ago. I would be willing to guess that either Trammel Crow or AvalonBay will own it under a restructured financial deal once all of these issues play out.

Mr. Rosen: I have a question. If you were going to continue to own it, what's the difference? If you're not planning on selling it, who cares?

Mr. Roberts: We care, \$12,000,000.

Mr. Rosen: But, it's only when you buy it or you sell it. If you own it, it doesn't matter.

Mr. Roberts: No, it's ongoing earnings. It's monthly annual income. It's real.

Mr. Abrams: I have a question. Before, I didn't hear what your long term intentions are on this specific property. I just wanted to make sure that we heard that for the record.

Mr. Roberts: On this specific property, our long term interest would be to own and manage it for the long term.

Mr. Salerno: Which we asked you at the beginning to define for us "long term" because, obviously, the other one in town was long term too. What do you mean when you say "long term?"

Mr. Rosen: Where I come from, "long term" is longer than 1 year.

Mr. Roberts: We own 4,000 apartment homes in the Greater Boston area. We've sold one community. That was Longwood Towers in Brookline. That was purely someone giving us an offer.

Mr. Salerno: How long have you owned those? I'm really not that bright. I don't know what "long term" means. So, how long did you own them in Boston that you've held them and you haven't sold them. Give us a time.

Mr. Roberts: I would say between 12 years and we have communities that we just completed months ago. So, we've owned those for 6 months.

Mr. Rosen: On your financials, what are the gains on the sale of communities? If you've only sold 1, I've got gains in 2 years.

Mr. Roberts: In the Boston area?

Mr. Rosen: Oh, okay.

Mr. Salerno: Sir, standing up in the back.

Mr. Adamovich: Gary Adamovich, 19 Brook Street, On lots 22 & 23, there is a sewer easement that runs from Waterville Lane to the back of the parking lot. What guarantee is there that there's not going to be a road or a road easement put in there to connect Waterville Lane to the back of that parking lot that would increase the traffic on Waterville Lane and Brook Street?

Mr. Roberts: I'm not sure if we're allowed to do that. Certainly, we don't own the land between our land and Waterville. So, that's not in our control.

Mr. Adamovich: But, if the fire chief or the police chief recommended it, would the town counsel approve it? What guarantee do we have?

Mr. Salerno: I'm not sure I understand your question.

Mr. Adamovich: My question is, supposedly you need a 50 ft. right-of-way. It looks like it's about 40 ft. Waterville Lane is a 40 ft. right-of-way now, cut down to a 40 ft. right-of-way instead of a 50 ft. right-of-way.

Mr. Alarie: Mr. Chairman, that's just private property. That's an easement over part of the lots that abut that easement.

Mr. Adamovich: From Waterville Lane to the back of the parking lot?

Mr. Kyriacou: Do you want me to show you on the board what he's actually looking at? Actually pointing out to the area?

Mr. Roberts: It's inverted.

Mr. Rosen: It's upside down.

Mr. Kyriacou: That's the story of my life. Actually, what the gentleman is pointing out is the area that should be right between here.

Mr. Adamovich: Lots 22 and 23 at the bottom of the hill.

Mr. Roberts: You're looking at the first plan.

Mr. Roberts: Is it this?

Mr. Kyriacou: He's actually talking about right here. So, right here you have actually a road which the builder has actually used to get through and to put a lot of the disposal of the soil, etc. So, what the gentleman is asking is, will they ever allow, as you can see, the road coming from here? It's pretty feasible to see a road coming through.

Mr. Liston: May I answer, Mr. Chairman?

Mr. Salerno: It's going to come to the abutter's lot. Then where's it going to go?

Mr. Liston: What they're talking about is a sewer easement crossing 2 people's property, 2 people probably in the room who live there. I doubt that anybody who has such an easement running through their property would permit anybody to create a road through their land where the only stated purpose in their deed restriction is for sewer purposes.

Mr. Salerno: Actually, Ron, can a road go over that sewer easement?

Mr. Adamovich: Even if the fire chief recommended it for access?

Mr. Alarie: If it's just dedicated as a sewer easement, it's private property. It's owned by Mr. Abram and Mr. Murdock, I believe.

Mr. Adamovich: Okay.

Mr. Salerno: Yes, ma'am.

Ms. Shapiro: Erin Shapiro, Waterville Lane. Mr. Chairman, members of the board, I certainly haven't had the benefit of looking at the Rizzo proposal and the impact that it has on traffic. Mr. Gordon, and I'm assuming it was thrown out as a hypothetical about the commercial parcels in the front and how they're going to be utilized, you actually commented on a coffee shop. Mr. Moss told me on Saturday that a high end coffee shop is bidding for that property. So, I would be interested in learning whether or not Rizzo's traffic study actually considered the impact of the coffee shop in the morning hours and, secondly, whether or not those studies will be made available to us for review or not?

Mr. Salerno: Did you know about that when you did this study?

Mr. Hall: For this site that we prepared, we assumed retail, not specifically a coffee shop with it's peak in the morning. It was a more standard retail, 20,000 sq. ft. We just don't know what it's going to be right now. It may not be a coffee shop. At the time we prepared the study, we just didn't know.

Mr. Roberts: The actual study includes a 10,000 sq. ft. pharmacy with a drive-up window and 10,600 sq. ft. of specialty retail, about 1,300 trips a day incorporated into the study.

Ms. Shapiro: With the board's permission, I would like to address one more issue too. I would urge the board to consider how this is going to affect and how taxing it's going to be on our public services. I called the chief of the fire department and I learned that Avalon Arbor has had well over 30 calls by the fire department in the last 365 days. Mr. Gordon mentioned putting up and financing a new fire department. I don't think that even begins to take into consideration the long term expenses of financing the salaries of all of the officers. The Shrewsbury Chronicle, on a weekly basis, certainly lists the police log. I understand that the police log isn't even exhaustive. Two weeks ago, after I learned of this meeting, I picked up the Shrewsbury Chronicle. There were 4 columns alone that were made to Avalon Arbor. So, I would ask the board to consider how taxing this will be on our public services, as well.

Thank you

Mr. Kyriacou: Andrew Kyriacou. The question becomes, in terms of all the wetlands, if they are going to be putting in wells, what's the possibility of those wetlands perking and they can build more? What is the protection of forever not being able to build on these wetlands? Later, what would be the effect on the wells that they're putting in for the irrigation systems?

Mr. Salerno: If I understand your question, are you saying within the highlighted area, if it perks, what's to prevent them from building?

Mr. Kyriacou: Correct. And, maybe in terms of a concession for us in terms of maybe some thought to this, as an attorney, somehow making sure to protect these properties from ever being built. I don't know, once the plan goes in that these will never, and I believe there are some more up here, to be built upon.

Mr. Gordon: I have a question. What is the capacity of this property if it were totally built out? I know that you can only build 300 a year, but what would the capacity of this be if it wasn't limited?

Mr. Roberts: As an extreme measure, a 4 story product?

Mr. Gordon: Yes, that you can build under 40B.

Mr. Roberts: Yes. That's 50 units to the acre.

Mr. Gordon: So, the empty land now could accommodate how many more buildings, unless it's limited?

Mr. Roberts: Under this current design, we could probably put 300 units on the site.

Mr. Gordon: Another 300?

Mr. Roberts: No, from 264 to 300. You know, get another building in there, some town homes.

Mr. Gordon: So, another 10 %. That's about it?

Mr. Roberts: You know, realistically, if we were asked to do an exercise and just start over and try to get as many units as possible, it could be much higher than that.

Mr. Salerno: Again, that's after your infra structure's done and the feasibility of putting something else on there after you build this plan and considering those wetlands? I don't know, is it a realistic?

Mr. Roberts: No.

Mr. Salerno: Okay.

Mr. Murdock: Again, David Murdock, 19 Waterville Lane. The question I have is, since Avalon is proposing building over and on wetlands, not just encroaching, but actually building on them as they build a road to get to the town homes, at what point, and who makes the decision to allow that, is it this board or is it a conservation commission and if so, when will that be made?

Mr. Alarie: Mr. Chairman.

Mr. Salerno: Yes.

Mr. Alarie: The wetlands issues are not subject to relief under Chapter 40B. That's a separate entity that is controlled by the conservation commission. There are separate laws that they enforce and it requires a filing before the conservation commission. A public hearing is held.

Mr. Murdock: Does that have to be approved before you all can approve their site plan?

Ms. Murphy: No.

Mr. Salerno: And you're aware, too, that a lot of the concerns that are raised, a lot of the issues about traffic, about impacts on schools and things of that nature, they are concerns but they're not factors in 40B. That's a fact of life that you should take up with your legislature. It's a law that somebody enacted and dumped on you and now you live with it.

Mr. Gordon: It's an unfunded state mandate.

Mr. Murdock: Well, I guess I would raise the fact that we live with it because we all live here.

Mr. Gordon: Right.

Mr. Murdock: Another question I have, and I'm going to sort of piggyback off of Mr. Gordon's comment earlier which is, how high can the credits go, how high can the incentives go? What's testing the limit? My question, back to Mr. Roberts at Avalon which we've never posed and I think is appropriate to pose, is what are the limits knowing our concerns about the buffering and everything else, what are the limits as to how much you can shrink this development to appease more of the concerns that, not only we as abutters have raised, but the town has raised?

Mr. Roberts: Our revised proposal represents our second reduction. The first one was to reduce to allow for retail. The second one was to reduce to create additional buffers. This is what we're willing to do as far as density.

Mr. Rosen: I have a question. At the beginning of the meeting, questioned on whether or not you would be willing to concede on the commercial space, if it was to go back to you, how long is it going to stay commercial?

Mr. Gordon: You were going to let us know before you left tonight.

Mr. Rosen: You were going to let us know before the end of the night.

Mr. Roberts: We put a time limit on that. We would agree for a 5 year period or something basically like that.

Mr. Rosen: You say you want it to stay commercial and we say we want it to stay commercial?

Mr. Roberts: Right.

Mr. Rosen: So, I don't understand what the issue is.

Atty. Schwartz: Well, the issue is that, at some point in time if people are presumably trying to make money by making that into a commercial site and it doesn't go, we want to have the ability to come back and have this board, or what ever the proper venue is, revisit that. We're not looking for the right as residential, we're just saying we'll commit for a reasonable period of time that people will try their best to put commercial there and, if it doesn't work, we reserve the right to come back and do residential.

Mr. Salerno: So, if we put that right or you agree to put that timeline, let's say maybe like outside of when the other project, we go back to you, would that be feasible because that would affect how many units we have in town?

Mr. Gordon: Mr. Chairman, I think we're going to be continuing this hearing.

Atty. Schwartz: As a technical matter on the commercial space, it really is not part of this proposal other than to say that it's part of the overall property.

Mr. Rosen: It's just in the purchase and sale?

Atty. Schwartz: Right, but it's not part of the land that we submitted an application on.

Mr. Gordon: Well, I think we're assuming that land that we own down the street may not be developed commercially or for research for a period longer than 5 years. So, I think 5 years is an awful short time to commit on commercial land. I realize it's a marketing problem and when somebody markets commercial property, it takes longer and then it's better. If it is done upfront, it usually is not better. So, I would rather have you review that and come back with a reasonable number of years, which to me is 12 to 15, but it may not be to anybody else.

Atty. Schwartz: I would just suggest to you there's a difference between master planning for a community saying that this is the use that we want for a piece of property or an industrial park or something versus privately owned property that people are saying we're going to take our best crack at. It's in everybody's best interest, in the landowner's interest, in Avalon's interest, in everybody's interest to get it developed as quickly as possible. In that context, 5 years is a pretty long time for people to have tried and in that case failed to get it developed. All we're saying is that we're not looking for the right for you guys to approve that as an additional phase, just that at that period of time we could come back and try again and put before you what the efforts have been to develop it for commercial and why they haven't worked.

Mr. Salerno: It would just seem nice if we may have some options to help us with our planning. If we know that, for example, the Arbor's in 5 years goes to full market, it drops the numbers of units we have in town and that becomes prime area to develop again in this phase. If we know that it's locked up there for 5 years in that commercial commitment, then we know what our numbers are when you get the Arbors back. It's

food for thought. We have a lot to think about too. That may be somewhat persuasive in how we think.

Ms. Garrity: Mary Garrity, 27 Waterville Lane. You mentioned continuing. I'm hoping that there will be another because I would hate for this to be rushed in such a manner that we are forced to appeal because enough questions weren't answered or because we did not have enough information and it was rushed and it was 10:00. I hope everyone's going to have time to work together on this and, if we've lost the "friendly 40B", get it back in.

Mr. Gordon: I would just like to remark on that. It would not go to the appeals court. It would go to something called the HAC, which is 3 letters for Housing Appeals Committee. Basically, if you read the old 40B which is still in effect, it says that this board has the option to approve with conditions or to deny. Then there's a statement made by DHDB, or whatever they're called, that, if it is denied, we will come down strongly on one side. That one side is not sitting on this side of this table. So, it goes there before it goes to court.

Mr. Abram: But, you can approve it with conditions?

Mr. Gordon: That's what most things are approved with.

Mr. Abram: If that board comes down hard in the other direction, we can appeal it as well which goes to the court.

Mr. Gordon: I believe it's true. The reason I said that we don't have enough information is because Mr. Roberts has told us that he will be giving us some other information on environmental matters and some other matters that slipped my mind for the moment.

Mr. Salerno: The study done for the wetlands and the 21E report that was at the board of health.

Mr. Gordon: I think we have enough questions that we have a basis to keep it open.

Mr. Rosen: Just one other question sir. In the original letter for the LIP proposal, it mentioned some issues that should be addressed regarding pedestrian connections with residential neighborhoods and whether or not pedestrian access from the proposed housing to the business complex be provided through the extension of the sidewalk on Route 20. Has there been any consideration on those matters?

Mr. Roberts: I have heard conflicting views on whether we should have pedestrian access between the residential neighborhood behind us through our site. We would be more than happy to accommodate that. As far as the sidewalk on Route 20, I do not believe there is a sidewalk along Route 20. We would be happy to add it.

Mr. Salerno: Let's get that person in back there.

Mr. Hodge: Mike Hodge, 14 Waterville Lane. Conflicting from whom for a passageway back to the residential neighborhood?

Mr. Roberts: The Department of Community Housing Development suggested that we create a pedestrian path connecting the residents behind us to the retail.

Mr. Hodge: I'm pretty sure we're unanimously against that.

Atty. Schwartz: Well, we'll tell them that it's been considered and the result is no.

Mr. Adamovich: Gary Adamovich, 19 Brook Street. If the wetlands were tested and they did have a problem, who would be responsible for it and how much of it would they be taking care of?

Mr. Gordon: Do you mean the 21E or the wetlands?

Mr. Adamovich: Well, the 21E. If they come out with any kind of contaminants in it, is it all of the wetlands or just part of the town that was granted open space which is like 8 acres of wetland? Would that be included in the whole wetland or would it just be partial to the wetland?

Mr. Gordon: I don't think that's something anyone can answer.

Mr. Salerno: I think a lot of that's speculation. To be honest with you, I'm not even sure we're capable of answering it. Not to dodge the issue, we try to answer everything as best we can, but I know I don't have the ability to answer that and I apologize.

Mr. Gordon: Mr. Morgado, has the town had to opportunity to have a consultant look into this and make recommendations and have they been followed?

Mr. Morgado: We've been looking at it for several months as you know. Ms. Barrett is here and we'll be talking as a result of this hearing. There are certain things that we have heard for the first time tonight. We're going to run it through engineering and the like and then go forward through the proper channels.

Mr. Salerno: Are there any other residents who want to comment? Yes, sir.

Mr. Kirk: Thank you Mr. Chairman. Chris Kirk, 40 Westwood Road. I've got a whole page, but it's getting late. I was listening to Mr. Hall, the traffic engineer, giving his traffic study. One of the petitions that he was relying on in his study was the presence of a light at the intersection of Valente Drive and Route 20. I was wondering, has that been built yet?

Mr. Gordon: The simple answer is no.

Mr. Kirk: No. My understanding is that the developers of Boston Hill have been having financial difficulties and that the planning board has called them back a number of times about proceeding with this traffic light or signalized intersection. So, it may not be completed in the next month.

Mr. Gordon: That's true.

Mr. Kirk: So, I would wonder about the validity of the traffic study. Another question I want to ask is that I understand that the profits from this project are limited, supposed to be limited. I was wondering, who is going to be in charge of any excess profits, who they are going to go to and who is going to manage them? Has that been decided yet?

Mr. Gordon: That's an AvalonBay situation. That's not us, I don't think. Is it, Tony?

Mr. Salerno: I don't know how that changes or affects the actual project, whether they profit or not.

Atty. Schwartz: There will be a regulatory agreement, as I mentioned before, that the town enters into with the applicant and DHCD which will govern the distributions return on equity.

Mr. Salerno: That means somebody else is going to tell you where the money goes, if I translate that simply.

Atty. Schwartz: Right. It's all regulated.

Mr. Salerno: It won't affect the development of the project.

Mr. Salerno: I think Ernst & Ernst are the people who do their accounting. Andrew can fill us in on that?

Mr. Kirk: The last question was, in their handout, they talked about that they're going to take care of their own infrastructure. I was wondering what is their infrastructure? Does that include water lines, sewer lines, catch basins, drainage, roadways, etc., etc.

Mr. Salerno: I'll let them tell you what their infrastructure is.

Mr. Roberts: Yes. Essentially everything within our property boundaries with the exception of the sewer line that currently runs through the easement.

Mr. Kirk: And, just one last one. There is a planned buffer zone along the abutters of Waterville Lane. I was wondering, it also probably touches on some properties on Walnut Street. I was wondering if there was a plan for a buffer zone or no disturb zone along those properties?

Mr. Roberts: The buffer zone along Walnut is 50 ft. from the edge of building to edge of property. In addition, that's where the steepest grades are so it's 2 stories that are probably 20 to 25 ft. below where the actual homes are on Walnut Ave.

Mr. Salerno: Does that answer your questions?

Mr. Kirk: Oh, yes.

Mr. Gordon: I just thought of one question, if you don't mind. AvalonBay is the general contractor, is that correct? Are all of the subs owned by AvalonBay and doing this building or are there outside subs that you use?

Mr. Roberts: All outside subs.

Mr. Gordon: All outside subs, okay.

Mr. Salerno: What are you doing now, moonlighting?

Mr. Gordon: No. I was wondering, if when you're the general and you have the subs and you own the subs, the distribution of costs and profit is questionable between the various things. However, if it's outsiders that are doing it, I feel a little more comfortable.

Mr. Roberts: We're a large public company. Our books are open to the public and highly regulated.

Mr. Gordon: I understand that.

Mr. Salerno: Mr. Rosen, who is our designated keeper of books has done his homework, obviously. We also have a letter from Anthony J. Bent, EDD. He's the superintendent of schools here. He sent a letter to the board that will be made part of the record addressing the concerns of the school department and the enrollment. He's asked us to pay attention to the traffic flow, the aspect of this project and the provisions made for the school busses to safely pick-up and discharge students. I assume you've addressed all of that with your traffic studies, but the school busses will enter into the development to make their turns and then what?

Mr. Gordon: No, they don't go into developments in this town. They are on the outside.

Mr. Salerno: Is that what they're going to do?

Mr. Roberts: Our intent is to create a stop at the site that everyone agrees works within the guidelines. If they're not allowed to enter the site, then we'll have to do something.

Mr. Gordon: No school bus in this town enters a subdivision that the streets haven't become public or enters an apartment complex of any type. That's to the best of my knowledge. Somebody may have better information.

Mr. Salerno: Which then leaves you with what, the pick-up to be done on Route 20 where there are no sidewalks?

Mr. Gordon: Absolutely.

Mr. Roberts: Right.

Mr. Alarie: In my conversations with Dr. Bent, they indicated that they would prefer to see a route where a bus could come in and be able to circulate back towards your clubhouse and office and be able to do a pick-up there. That's what I think he was referring to.

Mr. Salerno: Well, in essence, in his request, that's why I had the question relative to what your plans were, not to ask you the question first without telling you what the request was going to be, but we did. He would like to see you "construct a single covered bus stop at the community building." They would like that for a "location for efficient and safe pick-up and discharge of students, the roadway leading to the bus stop be so constructed to be able to accommodate a large bus and its turning radius and that a stoplight be installed at the entrance/exit of the road to allow busses to safely make their turns off of Route 20. We understand the board may not have total control over these specific requests that we've made, but we ask you to at least require items under your control to assist in the coordinating of these conditions for us and other agencies." That is submitted by Anthony J. Bent. He's the superintendent of schools, June 7, 2004 and made a part of our record.

Mr. Alarie: Mr. Chairman. Just for informational purposes, I checked for the availability of this room if you want to return to a specific date, since everyone's here. It's available July 21st, 22nd, 27th, 29th and generally all of the first week of August.

Mr. Salerno: Don't we have another scheduled meeting the 29th, Linda?

Ms. Lane: Yes.

Mr. Salerno: We have our regular monthly meeting scheduled for the 29th.

Mr. Alarie: We'll scratch the 29th. No, this is for July. I'm talking about July.

Mr. Salerno: Oh, June or July.

Mr. Alarie: I'm talking a month later.

Mr. Salerno: Oh, that's within the 40 days, Ron? Oh, we haven't adjourned, that's right. We haven't hit the buzzer yet.

Mr. Rosen: What was the July date, Ron?

Mr. Alarie: July 21st, 22nd, 27th, 29th.

Mr. Salerno: We're going to pole our board and anticipate that the request of this board will be to continue this hearing. Will you be meeting with the residents again between now and the next meeting? Is that a possibility and or is that a plan?

Mr. Roberts: We would be happy to do that, sure.

Mr. Salerno: I can tell you at least on behalf of myself and I'm sure the other members of the board, although you are polarized in your positions, I think the company and I think the residents especially are to be complimented because you look like, I know they are difficult issues, you are working together. That's all a part of the community and we're very appreciative, as a board, that we can have a meeting like this and residents can stand up and address their concerns and you try to give them information and yet do your business too. It's certainly a pleasure for us to sit here as a board and see that because it makes our decisions, and we're residents and we're trying to make the right call too, and this is something we do and volunteer to the town. I think you're all to be complimented on the efforts. We would like to see that continue. We're certainly going to work together between now and the next scheduled meeting.

I understand there is now a motion to continue to a date, and again, is there a consensus on the date here? Everybody is going to their Palm Pilots.

Mr. Roberts: Mr. Chairman, I unfortunately will not be in town the week of the 19th.

Mr. Salerno: Of July?

Mr. Roberts: Of July.

Mr. Salerno: Okay. Well, you're kind of an important piece here on this chess board.

Mr. Rosen: What about the 28th?

Mr. Gordon: On the 28th, is this room empty because the Lake Quinsigamond Commission's got a meeting that night?

Mr. Alarie: No, it's either the 27th or the 29th. The 27th is a Tuesday.

Ms. Murphy: He can't do Tuesdays.

Mr. Salerno: How's Thursday, the 29th?

Mr. Roberts: Is there another room?

Mr. Alarie: On the 28th, Mr. Gordon, you have another meeting?

Mr. Gordon: Well, we can talk to the Lake Quinsigamond Commission. They would probably be willing to use the smaller room. I probably can get somebody to sit in for me. So, if you want to do it that night?

Mr. Alarie: The 28th? I'll see if I can make provisions to switch the rooms with whoever has it.

Mr. Rosen: Seven o'clock?

Mr. Salerno: Seven-fifteen.

Mr. Alarie: Seven-fifteen? Would you like a commitment to send notices out to the abutters as well?

Mr. Gordon: Just first class letters. Could you do that, Mr. Alarie?

Mr. Alarie: We will do that, Mr. Gordon.

Mr. Gordon: Oh, I'm sorry.

Atty. Schwartz: Obviously, somebody did it right.

Mr. Salerno: Continuing this meeting to Wednesday, July 28th at 7:15 here. Any of the residents who cannot attend that meeting, certainly you are encouraged to submit in writing anything you feel should be brought to the board's attention. Just kindly forward it to the office, here. Again, it will be made part of the file and we will review it.

Thank you all, again. I hope we can continue to work with this kind of effort to resolve this.

The move to adjourn has been made and seconded and unanimously voted in favor.

JULY 28, 2004, ADJOURNED SESSION

PUBLIC HEARING: AvalonBay Communities, Inc., 890 Hartford Tpke., Shrewsbury, MA.

PRESENT: Anthony M. Salerno, Chairman, Paul M. George, Melvin P. Gordon, Bridget M. Murphy, Ronald I. Rosen and Ronald S. Alarie, Building Inspector.

Mr. Salerno: This is a continuation of the prior hearing to hear the appeal of AvalonBay Communities, Inc., relative to their petition. At the suspension of the last meeting, Avalon was making their presentation. Gentlemen, I just ask again, identify yourselves for the audio record and continue with your presentation.

Excuse me; prior to that, for those who weren't in attendance at the last meeting, it's been a practice of the board to conduct this meeting in an informal manner. We ask that you just adhere to several rules of courtesy. That is, allow each and every one of your fellow residents to participate in the meeting, to do that in an orderly fashion. We ask the petitioners to make their presentation, the board makes their inquiry of the petitioners and we then open it to the residents that are here or parties of interest. We ask that you just identify yourself for the audio record and listen attentively to everybody so that everybody's opinion and statements will carry equal weight. Give them the same attention and consideration that you want when you speak. We'll do it in an orderly fashion when you're recognized. I think with those simple rules in place, we'll have a great exchange of information and opinions.

So, with that in place, again, just identify yourselves, prior to speaking, for the record and continue with your presentation.

Mr. Roberts: Thank you Mr. Chairman. For the record, I'm Michael Roberts with AvalonBay Bay Communities. I have with me Steven Schwartz, counsel from Goulston and Storrs.

Again, if you wouldn't mind, I'd prefer to stand so that I can address the entire group. I do appreciate your time to allow us to continue our presentation with our proposed development in Shrewsbury along Route 20. What I would like to do this evening is keep the formal presentation brief, but really follow up on a lot of the follow-up items that we had discussed in our last hearing.

What you have as a handout and what you see on the board here is our most recent proposal. This essentially is the proposal that we had presented in our last hearing, presented as the revised proposal reducing the total number of apartment homes from 277 to 264. The buildings are the same. The number of units is the same. The unit mix is the same. Essentially, all that has happened is that we've refined our civil engineering drawings and formalized the landscape plan as well.

Very briefly, as we had mentioned in the prior presentation, this is our site. This is Route 20 heading east towards Route 9. We have the Southwoods residential neighborhood located towards the rear of the site. Walnut Street runs up this portion of the site. As a point of reference, the Rainbow Motel is in approximately this location.

As we had mentioned before, the orientation of the plan is such that we have an amenities management leasing office here, with a pool, located at the front of the site. We have preserved this portion of the site for commercial retail use. As suggested by the planning board, we have reconfigured this boulevard so that circulation is much more efficient and addresses safety concerns. We have moved the proposed tot lot from this area to a more central location. In addition, as we had stated, we had made several revisions to the plan. This building in particular we had reduced in size. That allowed us to reorient and increase a buffer zone to approximately 160 ft. with this building. In addition, the town homes in this vicinity, we'll reduce the elevation from 3 stories to 2 stories. That allowed us to remove the garages and essentially move them across the street providing a buffer of approximately 220 to 230 ft. from those town homes.

In addition, we have revised the plan. This particular set of town homes had a 3 story elevation. We've reduced it to 2 stories maintaining a 100 ft. buffer. As we had originally planned, all of these town homes have a 2 story elevation in the rear.

In addition, we have added a couple elements which aren't very clearly identified in this plan, but we have provided a revised more detailed site plan. We have added a chain link fence along the rear of the site based upon the discussions of our last hearing, which helps to provide or mitigate potential pedestrian traffic between Southwoods and the proposed development.

In addition, this is the one building that actually has surface parking between the building and the rear of the site. We have added a privacy fence which is a 6 ft. vinyl privacy fence to help, in addition to the distance buffer, provide a visual buffer to the parking areas.

Based on our discussions at the last hearing and also based on some formal correspondence, there was a list of follow-up items. I would just like to run down that list. I have provided to you in letter form and in document form some of the follow-up information.

First, this is in reference to a letter dated June 23rd provided by Eric Denoncourt. The suggestion was made to provide more detailed site and civil plans and landscape plans at a scale of 1 in. to 40 ft. Those have been submitted. In addition, we do have an up-to-date, a more recent set of those plans, to provide to you this evening. The only change between the plans that you have and these plans is that there are some further details added to the site and civil plans.

The suggestion was made that we correspond directly with the Department of Housing and Community Development outlining the fact that our proposal has changed from the original proposal that they had approved. We have provided and sent that letter which has been copied to you. It essentially outlines what we're proposing and how we've changed it primarily going from 283 apartment homes, as originally approved, down to the 264.

The request was made for a formal copy of the Local Initiative Program, the LIP Application along with the letter of support from the selectmen. That has been provided as well.

In addition, reference was made to our purchase and sale agreement. We had touched on this briefly in the last hearing. The issue being, we have maintained an option to purchase the retail portion of the site to the extent that current ownership is not able to provide for a retail development in a specific period of time. Our concern, as we have expressed, is that we want to make sure that something goes there that is different than what is currently there, being that that is essentially our front door. The Town of Shrewsbury has addressed or expressed their concern that they want to preserve the ability or the right for that to be commercial retail. We have formally proposed in our letter to you that AvalonBay would agree to prohibit anything other than commercial or retail development for a 10 year period. We felt that that helped to sort of mitigate your concerns. From our perspective, that will give the current ownership the chance to create commercial retail. It will give us a chance, up to 10 years, to do the same thing. If, after 10 years that has not been a successful endeavor, then we would have an option to go to Plan B, whatever that may be, under the current Zoning Bylaws in the Town of Shrewsbury.

In addition, there were several technical orientated questions that related to our sewer and water design. I have with me this evening John Ryan from HW Moore as well as Andrew Liston, who just made a timely entrance, from Thompson-Liston. I believe in our follow-up information we provided revised calculations and some information

addressing these technical questions. We're happy to address those to the extent that you would like to later on in the presentation.

In addition, there was the request to formalize our commitment to not irrigate our site through the existing water system, but to do it through an on-site well. We have made that commitment. We have been made aware recently of a concern or conflicting information as it relates to our environmental report. We have filed, as part of our 21E assessment with D.E.P., a study to address that, and I'm going to ask Steve Schwartz for the official terminology for the document with D.E.P.

Atty. Schwartz: I actually don't have the document in front of me. One of my partners is dealing with that. I believe it is maybe an Activity In Use Limitation or it's some form of deed restriction that we are presently negotiating with D.E.P. which would obligate the landowner to close the current well and not use it for drinking water purposes, but which would allow for its use for irrigation at some time in the future if we demonstrate to D.E.P. that that doesn't present a health risk, which we believe it won't for irrigation purposes. So, we do believe that we can make the commitment to this board that we will not use municipal water for irrigation and put the burden on us to work out any issues with D.E.P. in terms of use of on-site wells for irrigation.

Mr. Roberts: In addition, a formal request for a photometric plan was made. We have provided that photometric plan along with our revised and formal landscape plan that was submitted to the board.

There were also 2 other items related to both our entrance and potential mitigation on Route 20 and our discussions with Mass Highway. Specifically, there is a request to involve the Town of Shrewsbury in our discussions with Mass Highway. Since our last meeting, we have had a meeting. The Town of Shrewsbury was represented by Eric Denoncourt. At this point, what I would like to do is turn over the presentation to Rick Bryant with Rizzo Associates, our traffic consultant, to briefly do a follow-up presentation of those issues. Then what I would like to do is, there are a couple of other follow-up items outside of this letter that I would like to address after Rick's presentation. That will conclude our formal presentation. Thank you.

Mr. Bryant: Good evening. For the record, my name is Rick Bryant with Rizzo Associates. We're the traffic consultants that have been working with Avalon since the beginning of this project.

I wasn't at the last meeting. I'm told that there were questions about the projected levels of service at the site driveways under the built condition as well the scope of mitigation that's being contemplated with this project. As Michael indicated, we are on state highway Route 20 who owns and controls the roadway. Anything that we do out there, we need to get their permission to do it. As such, we initiated meetings with Mass Highway early on in the process. On the 15th of this month, we had representatives of the town at a follow-up meeting just to go over the operations issues and the mitigation program.

Just to recap where we are in mitigation, we're showing up top here Route 20 traversing this study area, the site here located in the middle. The signal at South and Green Streets is here and we have Walnut Street, Valente Drive and Olde Shrewsbury Village at this end. What is proposed by others right now is a major widening for the Boston Hill project that is basically going to widen out to 5 lanes at this intersection, tapering back to 2 lanes by the time they reach the vicinity of our location. Going west of our driveway, it's 2 lanes right at the site, but it widens to 3 lanes heading west. A second lane headed westbound associated primarily with, there's a bit of an upgrade, more of a climbing lane than anything else. It begins just to the west of our site. What Mass Highway has asked us to do, which we've agreed to do, is to basically take what's a 2 lane westbound section back at the intersection and carry it through as a continuous 2 lane westbound section to where it meets up with the existing climbing lane so that we end up with a consistent 2 lanes heading west and effectively a 3 lane section next to our site. We're showing that in a little more detail here. It's 2 lanes all the way through across our site.

At the same time they've asked us to cut in an acceleration lane and a deceleration lane at the 2 driveways so that someone who's pulling into the site has the ability to pull out of the way of the faster moving traffic and likewise coming out of the site, have the opportunity to come up to speed and merge with traffic. So, we're showing a widening towards the property to accommodate those lanes. We're were also asked, and were able to demonstrate, to provide the ability to do some further widenings at some point many years in the future should Mass Highway ever see the need to do more work out here on there ticket. This is work that we would provide. They just wanted assurances that our parking and buildings are sufficiently far back from the roadway that they could come in and go to a 4 lane road or a 5 lane road if they chose to at some point. We've demonstrated that that ability exists.

So, that's what's going on between us and Mass Highway. Part of that discussion related to the operations at our driveway. I believe that it was reported to you that our driveways operate at level of service F under the built condition. That was disturbing to a few people. I'm not surprised because all of us having gone through grade school and received our letter grades from A to F, hopefully not many Fs, are very fearful of level F conditions. I first want to explain that level service F in the traffic lingo is a measure of delay. It doesn't mean failure. It doesn't mean the intersection doesn't work. It means that people are subject to longer delays at that location. Specifically, when we're dealing with an unsignalized intersection, it means in this case, that traffic making a left turn out of the driveway is delayed. You can imagine that the toughest thing to do at the driveway is going to be a left turn out at rush hour. That's what we studied rush hour, morning and afternoon traffic. If you're going to wait 50 seconds, that's F. There are probably many signalized intersections on Route 9 that operate on a 2 minute cycle because there are left turn phases and everything else, where you probably sit there 50 seconds on a regular basis. So, understand that, when we say it's F, we mean that the left turn out has to wait 50 seconds or more. Through traffic isn't waiting on anybody. There's no stop sign on through traffic on Route 20, so there are no delays there. The right turns, as you know from driving, are an easier movement and you're not going to see an F condition. The wait is much less. So, first off, F is not failure. Just understand that. But, it is long delays. The question is, is it bearable?

As a point of reference, I just pulled some figures from our traffic report which has been available for review for some time. In our report, we've basically, in a stick diagram, illustrated Route 20 and all of the intersections, streets and the turning vehicles that we counted at all of the intersections along here at the morning peak hour and the afternoon peak hour. I know that it's a little hard to read it, but we blew up some of the numbers. These are existing conditions for 2004. Here are some of the other left turn volumes that are happening out there. We have 25 lefts in the morning coming out of Cherry Street, 60 lefts coming out of South Street, at Walnut Street we hit 45, 20 coming up from the south of Walnut Street. In the afternoon you can see some similar figures, 30, 35, 50. These are all left turn movements that are being made today out on Route 20. In a forecast for our driveways, we're looking at 20 at the western drive and 45 at the eastern and in the afternoon, 20 and 40. The point is that we're at the same order of magnitude of what you see out here today. These are cars that we counted going through the intersection, so we can't say that that was over capacity. We counted; 30 cars made the left. We're thinking that 20 are going to make a left at our driveway. So, again, putting things in context, the numbers at our driveway are very similar to the numbers that you're handling right now at other unsignalized locations along the roadway. I wanted to share those figures with you.

One last thing that I would like to share with you is that one thing that we do, if you've gone through the report, is we did capacity analysis. We look at volumes and we look at all of the conditions and we plugged all of those numbers into computer models that supposedly say that this will work and gives us calculated delay figures. But, it's a computer model. It's done in the office. When push comes to shove, we roll up or sleeves, we get in our cars and we go out in the field and we sit at the intersections with our stopwatches and we measure delays and what's really happening versus what the computer tells us. We did that experiment out here because we knew of the concern. Some of the locations that I just described to you we're showing you here, Walnut Street coming up from the south, Walnut Street coming down from the north, Olde Shrewsbury Village coming down and trying to make a left. What we're showing in red are the numbers that we calculated for our report, the computer generated stuff in the office, our synchro traffic model. Synchro is short for synchronization. The model was developed to look at signalized intersections. We have them all tied together and you're looking at a synchronized system. It works great for that. It's a little bit dicey on the unsignalized stuff. That's what we did here. These are unsignalized locations. We were getting calculated delays of 145 seconds here at Walnut Street in the morning, 455 seconds in the afternoon, over 1,000 seconds at Olde Shrewsbury Village. These numbers you don't see out there. We sat there at the intersections and we measured 13 seconds, not 145; we measured 21 seconds, not 455; we measured 36, not 105; 56, not 1,000. Again, the reality is that our volumes at the drive will be similar to what you see there today. What we are seeing there today from actual sitting and counting cars, counting the delays, are very manageable delays. We're talking 13 seconds to 56 seconds. Yes, that hits our threshold of F, but it's not the kind of things that one might believe if you were to trust the computer models in this case. So, I hope that puts your mind a bit at ease on the level of service results.

I would just conclude with one final point. Your staff, in our meeting with Mass Highway, kind of pressed the issue and said "Well, say my board still doesn't like the

level of service, what can we do? Can we put in a traffic light?" No is basically what they told us. No, there is not enough volume. We're talking 20, 40 left turns. That's not enough cars to justify a light. Obviously, if Mass Highway said yes to a light for our 140 cars, then we could be going down the street at all of those other intersections putting traffic lights. No one could move down Route 20 because it would be all lights.

The other question was asked was if the left is the one with the long delay, can we prohibit the left and put a no left turn restriction on the drive? Again, the response from Mass Highway was no, we don't want to see that because someone who really wants to go left potentially turns into some neighboring driveway and makes an illegal u-turn or something to that effect. That creates a safety problem that's a greater concern than the concern they have with someone waiting a little longer to make a left out of the driveway. The reality is that the delays aren't that long. As we've mentioned, we think people will live those delays for left turns. People who have less patience will have the opportunity to find another way to head west. If they want to turn left, they can go down to Route 9 and go west on Route 9 if that's the case. They could leave at another time of day when things aren't so busy. We're confident that this is a manageable situation and one that works for our client who has as much interest in this as you. If the first residents can't get out, the new residents will be reluctant to move in. We're confident that it can work from our perspective and we're confident that it works from the town's perspective. As I've said, we've explored the options with Mass Highway. They've pushed us into doing a lot of work out here to make Route 20 work as well as it can and they're comfortable with what we're showing for our driveway treatments.

Mr. Salerno: For the benefit of the people who haven't read your report, what criteria did you utilize to establish the numbers in your model?

Mr. Bryant: We look at it a couple of ways. We start with the Institute of Transportation Engineer's Trip Generation Handbook. People like myself across the country go out to existing facilities, do a car count and compare the number of cars generated to the number of units and say that this type of development generates x cars per unit of housing.

Mr. Salerno: What number was that?

Mr. Bryant: That number in the peak hour is about .65 trips per dwelling unit. That's the published standard. Like I say, data gets collected from across the country and is sent to Washington, DC. They publish a book that I get to refer to that tells me these figures. We've been working with Avalon for about 5 or 6 years now on a number of projects. In going through this type of process, we've been asked to go out and count at some of the other ones that have been built. Where we've done that in eastern Massachusetts, time and time again, we're hitting the numbers pretty much on the nose.

Mr. Salerno: Aren't the demographics kind of set where the units are located? For example, in Newton and some of the more urban areas, there are different modes of public transportation that we don't have access to out here, T lines and things of that nature? So, how do you reconcile that in your study?

Mr. Bryant: If we anticipate or see the opportunity for a large transit share, we'll try to account for that. The sites that we have surveyed are pretty much similar to this in terms of the suburban location. We've been in Wilmington, Andover, Lexington, places in the 128 to 495 belt that really aren't transit accessible. We're not sitting on the green line. We're not in Harvard Square. So, they very much are oriented sites.

Mr. Gordon: Since I'm the one that considers F a failing grade as opposed to a delay, in looking at your red lines as opposed to your blue lines, it would seem, knowing nothing about traffic engineering, that the studies that you're using are garbage. Those are huge discrepancies between what your books report and what you're saying is happening. When did you do these studies, the blue studies?

Mr. Bryant: The blue studies were done over the last week.

Mr. Gordon: Last week? You mean the first week of July or the second week of July, vacation week? Is that what you mean?

Mr. Bryant: About a week ago.

Mr. Gordon: So, vacation weeks when people are away?

Mr. Bryant: I'm sorry, yes.

Mr. Gordon: So, it might not be an actual accurate count of traffic in that area? So, actual might be closer to theoretical if it had been done at a time when schools and other things and transportation are running? By transportation, I mean 18 wheelers.

Mr. Bryant: What we did, in fact, was we not only recorded the delay, we counted the left turns as well for that same reason.

Mr. Gordon: During vacation week?

Mr. Bryant: During vacation week. But, the numbers that we counted were very similar to the numbers that we counted back in February when we did the original study when it wasn't vacation week. So, when I tell you there's 21 seconds delay observed, it's based on 30 left turns and this 455 is based on a count done in February when there were 27 left turns. So, we did check to see. As you see, I have A.M., P.M., P.M., P.M. I don't have an A.M. here for that very reason. I looked at what I counted in February in the A.M. versus what I counted in July and I said these numbers aren't matching. I can't do an apples to apples comparison on this one so we didn't look at that.

The same thing happened at Olde Shrewsbury Village. When we counted in February we had a big number coming out in the morning and a very small number coming out in the morning in July. So, we said we can't do that comparison. So, we understand the issue you brought up and we considered that when we pulled this data forward for analysis.

Mr. Rosen: The .65 trips per unit, is that during the peak hour?

Mr. Bryant: That's peak hour.

Mr. Rosen: So, you're talking 180 trips?

Mr. Bryant: Correct.

Mr. Gordon: And the breakdown left to right was?

Mr. Bryant: We worked with about a 50/50 split.

Mr. Gordon: The only thing that bothers me about your numbers, when the planning board was doing a subdivision review of houses being built off of Walnut Street, the neighbors complained bitterly about delays. It seemed to that that they were forever and things were dangerous. You're showing basically no traffic at Walnut Street. In fact, I don't see Walnut Street. What he's saying is one thing and what the neighbors are observing is entirely different. How would you explain the discrepancy?

Mr. Bryant: What I find is that people generally have trouble accurately determining the time that they wait. Secondly, they remember the poor experiences. This is a condition that was averaged over the peak hours. We sat there for the whole 7:00 to 9:00 A.M., isolated the peak within that and calculated the average delay for all the vehicles that came up from that approach and made a left turn. That's not to say that, if 21 is the average, that somebody didn't wait 40 seconds or 50 seconds. I'm sure the person who waited 50 seconds felt that it was a long time. That's why I have given it the F rating, because of driver expectation, 50 seconds starts to become uncomfortable if there's not a light.

Mr. Gordon: I think the concern at 50 seconds is that somebody will do something stupid because they're frustrated. I think it's closer to 50 seconds at Walnut Street than your 20.

Mr. Salerno: Well, 50 seconds isn't bad if you're the first car, but if you're the third car, it's a different matter.

Ms. Murphy: That's the average. What's the mean or median?

Mr. Bryant: I would need to spend a little time digging.

Ms. Murphy: Because the average really kind of skews it a little bit. Somebody gets out right away and somebody else sits there and waits for 3 minutes to get out. I'm sure that that's really frustrating for the guy who's sitting there for 3 minutes.

Mr. Bryant: Yes. I don't think we had any observations in the 3 minute range.

Ms. Murphy: No?

Mr. Bryant: I think the most we were seeing was 20 seconds.

Mr. Gordon: No, not at the time that you were doing this.

I happen to agree with Mass Highway that a left turn restriction would be counter productive because I think people would try to avoid it and, unless you put the driveways facing straight towards Boston Hill, they would avoid it all of the time. That would be an accident waiting to happen as is happening in Boston Hill and the reason for a light there.

When you say South Street, that's the South Street on the south side, not the signalized one, the unsignalized one.

Mr. Bryant: This is Walnut Street from the south.

Mr. Gordon: Okay.

Mr. Bryant: Other than that, we measured cars coming down the hill to 20 and coming out of South. South is the south side.

Mr. Gordon: No, I meant South Street, which is the next street, that one. It's unsignalized.

Mr. Bryant: Correct.

Mr. Gordon: The line of site is terrible going left. I think that's one of the more accident prone intersections, South Street from the Knights. Remember when we used to take our kids trying to get out at night? There were no police. It was extremely difficult.

Mr. George: The only time you have a chance to get out was when the light turns red.

Mr. Gordon: At the other end?

Mr. George: Yes.

Mr. Gordon: And somebody doesn't go through it.

Mr. George: Right.

Mr. Gordon: When you say 2 lanes, you are going to open this to 2 lanes, you mean 2 westbound lanes?

Mr. Bryant: Correct.

Mr. Gordon: And 1 eastbound lane or 2 eastbound lanes?

Mr. Bryant: One eastbound.

Mr. Gordon: Plus an acceleration and deceleration lane for the length of your property or just the parcel?

Mr. Bryant: Basically, since it's covering 2 driveways. Our acceleration lane ends here and tapers back to existing actually going a little bit further than our property line. We pretty much have the same situation on the other end.

Mr. Gordon: So, basically, in that area it will be 2 lanes on both sides?

Mr. Bryant: The width is there to re-stripe it at 4 lanes if you choose to. Mass Highway felt a better operation is to keep it 1 lane through with an accel/decel.

Mr. Gordon: The last accident that I saw down there was somebody trying to use the acceleration lane and got crushed by a truck. That's always a danger, but that's not your danger. I'm just concerned about left turns for there. And I'm concerned about your numbers. I just wonder if there's something else that can't be done between you and Mass Highway to make it safer. I wonder if maybe now is the time for you to add another lane and an accel/decel lane? I wonder what Mass Highway would think about that because that would give us, I don't know. That's a Mass Highway kind of thing.

Mr. Bryant: My own opinion on the matter is that, when you start making it wider, you potentially make it more difficult to make a left turn out because if they only have 1 lane to cross it takes me less time to get out. I can fit into traffic better. As I add more lanes they have to cross, the left turn becomes more challenging for the driver. Again, from my own professional experience, I'm not married to the idea of the acceleration and deceleration lane. If the town felt strongly about eliminating those and just having traffic come up to a stop sign, wait for the gap and make the right turn, I would gladly support that and go back to Mass Highway with that.

Mr. Gordon: I think we would have to ask engineering about that. That's something for them.

I just notice the difference in the red and the blue and it concerns me when computers and people are so far different. It makes me think of GIGO which was a term I learned when I was very young, garbage in, garbage out. I just wonder how many of these situations exist.

Mr. Bryant: Again, the computer model was developed to look at signalized intersections on a network. They added a feature to be able to look at an unsignalized intersection. It doesn't work. I've been at it for over 20 years. There are constantly issues about the accuracy of some of the computer models at unsignalized intersections. They work pretty good in the middle range. When you kind of get to the point where you're hitting level service F things look odd at times. You've all done the right thing to say we're not comfortable with this. Take a second look. What the books tell us to do, the models tell you to do is when all else fails, go out in the field and measure it. That's what we did. If the board wants to see more data, that needs to be done. Again, we looked at multiple locations and saw a consistency the field observations were dramatically different than the computer results.

Mr. Roberts: If I might add just a couple of comments to the traffic study, I would say probably the most important aspect is the number of cars generated. I think we have

proven that the model does work on predicting how many cars are generated just based on our experience with developments where we've done traffic studies and then we've completed the development and then measured the amount of traffic. I believe we also did that in Westborough, which would be a very comparable community.

Mr. Gordon: So, you're saying this is an anomaly, this difference between the computer and the actual counts?

Mr. Roberts: Well, yes. What I'm saying is the amount of traffic generated from our perspective is probably the most important. I think we've proven that that's accurate. What this measures is the time of the delay. I think the point here is that that model for this particular development is not accurate. So, what we look to as the owner of this community is, forget the model, our projected amount of delay acceptable to people who want to live there. So, that's where we take actual data from intersections in and around our community and we find that we fall within those ranges.

We have another community in Marlborough on Route 20. It's a little smaller development, but the conditions and the sight lines are much tighter. That has turned out to be a satisfactory condition. Then, most importantly, is it safe? That's a comprehensive part of the traffic study. It's also something that Mass Highway's very concerned with. It's their feeling that, based on what we know and based on these proposed improvements, they feel that it's a safe development.

As far as the mitigation, we have agreed. I think it's a good example of how we do things. It is a good fit. They're widening it to 2 lanes. It gives us an opportunity to extend it. I think it's a good mitigation proposal. It's sort of consistent with what's going on around. It's probably about a \$300,000 check AvalonBay is going to have to write to improve Route 20 for 20 to 40 left turns. From our perspective, I think we're comfortable, as a future owner, with the traffic situation.

Mr. George: Are you saying that this project is going to be comparable to the one on Route 20 in Marlborough?

Mr. Roberts: In Marlborough, there was nothing required. I take that back. I think we configured a left.

Mr. George: That's Route 20 in Marlborough, right?

Mr. Roberts: Right.

Mr. George: Over here, you have 2 major highways. You have Route 9 and Route 20 converging at almost the same location. So, doesn't that create more traffic than the one on Route 20 in Marlborough? When you have Route 9 entering onto Route 20, you have more congestion as to where Route 20 in Marlborough?

Mr. Roberts: I would have to take a look at the specifics. I guess my point is that Marlborough's Route 20 condition F on a left-hand turn is the same dynamics and is a successful community. From a traffic perspective, it's been acceptable.

Mr. Gordon: Is that community the same demographics as what you're proposing for this community, people in their 40s, almost equal men and women, mostly single and small family? Those are the people who are going to get most frustrated at a 15 minute delay. That's why I'm asking. I know you can't help that.

Mr. Roberts: We don't include that category any more.

Mr. Gordon: No. I'm not in that category any more. I'm the ones you want to take the license away from. Maybe that's a good thing.

Would you discuss the acceleration/deceleration lane with the engineering department to see what their feelings are?

Mr. Roberts: Absolutely.

Mr. Gordon: Okay.

Mr. Salerno: Are there any other questions from the board?

Mr. Roberts: I actually have just a couple more follow-up items. In addition to the formal request contained in the letter there was also a request to provide a full copy of the 21E study that was completed for Rawlings Gear Works, which has been provided.

We've been asked to complete a water flow test to confirm capacity of the existing water system. That has been completed. I believe we have the formal results with us this evening. The result being that there is more than enough capacity in flow to accommodate the development.

There was a question about the proposed school bus location and whether it should be onsite or offsite. One of the things that we've done is we've relocated so that the bus would not have to turn into our site to provide access to and from the bus stop. Also included in our revised plans is sort of a larger scale detail of that design. We would look toward the Town of Shrewsbury to let us know if that is as more acceptable alternative. If it is not, if there are suggestions, certainly we will design it the way that the town would like it to be designed.

Mr. Gordon: I was the person pushing for a bus stop on Route 20. Looking at the way that you've built the bus stop, I believe I asked that the school department be spoken to. The school department would be more comfortable and I would be more comfortable, I think we would all be more comfortable, if the bus drove into your site, took that first left right after the clubhouse and came into the clubhouse parking lot to pick up the kids there so that their parents could park there. Those parents who abandon their kids, the kids would be farther away from the street. You're already talking about the excess of traffic on the road. I would be one to reconsider where the kids are picked up. You would have to check with, who is it, Pat Collins of the school department, Ron?

Mr. Alarie: I spoke to Pat Collins today. His preference would be that the school busses enter the site and pick up internally rather than being out on Route 20.

Mr. Gordon: You wouldn't have to do anything there, you would just have to make sure that the entryway could be used by the busses.

Mr. Roberts: We would be quite willing to accommodate that.

Mr. Salerno: What about handicapped students, Ron? That's a separate mode of transportation.

Mr. Alarie: I'm not sure how they accommodate those children, but I can inquire. We focused on similar complexes. Wherever it was possible, the school busses actually enter onto the site and pick up the children for those sites along Route 9, Route 20 that currently exist.

Mr. Salerno: No, maybe I didn't phrase that artfully, but the handicapped students would be picked up on-site. I think state law mandates that.

Mr. Gordon: By state law, they're picked up at their location.

Mr. Salerno: So, they're going to be coming in, the smaller busses are going to be coming in if, in fact, there are any handicapped students. I think for purposes of continuity, it would probably make as much sense to have the other busses come in too because they are going to have to come in for the others.

Mr. Roberts: Yes. Five percent of all of the apartment homes will be fully handicap accessible. In addition, parking throughout the site will contain handicap parking including our amenities center. So, it sounds as if we'll have both the bus stop and you will also have handicap parking spaces at the community center as well.

The last item, or request, was to make sure that we continued our discussion with our neighbors as it relates to our current development. If you recall, we had at the time of our last hearing, presented sort of an additional proposal to provide a landscape buffer, a landscape berm, along the backyards of our neighbors. We have formally sort of taken the design of that concept a step further, which I'll get into in a minute. But, in addition, we have received a formal communication via letter from the Southwoods residential neighborhood of which you were given a copy. I've also responded to that letter and copied the board as well. I want to just take a couple of minutes to review the correspondence and formally provide some commentary.

Mr. Salerno: You responded to their July 14th letter. You sent it to them. You sent it to the Selectmen, a number of people, correct?

Mr. Roberts: Correct.

Mr. Salerno: All right.

Atty. Schwartz: We copied you on it, Mr. Chairman.

Mr. Salerno: I don't want to be repetitive in what we're going to cover because we've been through that all at the last meeting and you've responded to it in writing. I'm sure we're going to hear from the residents about that. So, it might be more efficient to respond to these particular questions because, if there are some of them that everybody's satisfied with, there's no sense in just beating that drum. Is there something new in the presentation?

Mr. Roberts: No. I'm happy to proceed in that manner.

Mr. Salerno: I just anticipate, Mike, that you're going to have those questions.

Mr. Gordon: Is that what you're discussing with the Southwoods neighborhood? Are those private matters on private lands that will not affect the project so far as we're concerned?

Mr. Roberts: As of the last hearing, it was. Part of the content of this correspondence was to try to bring some of that additional buffer back onto our site. We haven't really had a chance to get sort of a formal response as to where we are.

So, that concludes our formal part of the presentation. Again, we appreciate your time and look forward to any questions.

Mr. Gordon: I have a couple of questions going back a little ways. The Globe Texaco site, as I understand it, is in a Phase V mitigation. The DEP has not signed off on it. So, we don't know, really, what conditions are going to be. As I understand it, the water may never be used for irrigation and there is one section that may never be able to be used for building. Is that your understanding?

Mr. Roberts: That is not. Our understanding is that we have a Response Action Outcome, an RAO, filed with D.E.P. Certainly, a final signoff on that would be a requirement of proceeding with this development. It is our expectation and our understanding that, based on that final signoff by D.E.P., we would be able to develop our community as proposed. We would be able to provide well irrigation. The restriction would involve not being able to provide well for domestic water.

Mr. Gordon: What about the swimming pool?

Mr. Roberts: I don't know.

Mr. Gordon: So, we have a little difference, but it's all in the hands of D.E.P.? Basically, you don't know and I don't think you'd want it if it came out bad.

Mr. Roberts: Correct.

Mr. Gordon: Now I would like to go to the thing that you gave us tonight which nobody's really had a chance to look at. Once thing I did notice is that it's a Phase I study. A Phase I study, although they say there are wells here, is from my understanding, a study of literature. I think it's safe to say that they missed a number of things. I was asking before about well water on the Rawlings site. The Rawlings site goes back, I might forget when, but it goes back decades. There was no water on Route 20 at that point. So, if your guy didn't find a well on the site, has somebody signed off on that well being closed? Also, I saw nothing in here about septic. Is there septic on the site? Has the health department signed off on closing up the septic systems?

Further, on a quick reading, I saw that there is discussion of the oils and that that have been used. But, the statement is it isn't strong enough for mitigation and they're calling it mineral spirits. Now, the mineral spirits, if it's a PCP or a PCB or TPE, those are mineral spirits. Now, are those in the grounds? Looking at the barrels, I would not think that the site was carefully cared for. I would think you would want to do a Phase II just to make sure yourself. There is a well there somewhere. There may not be mitigation, but if I was investing this much money, I would want to know that it did not need mitigation. I would want to know that the septic tanks, before I dug a hole in the ground, were gone and that the town had signed off on those. You gave it to us tonight so nobody's had a real chance to look at it, but just on a quick look at the executive summary, I think you have some potential problems. I think you ought to pay some more attention to them and tell us more about them. I think there should be additional wells and the additional wells should be near the building where the oil might have been spilled not on the outskirts. I think you've got some questions that you should have answered before you sign off on this report. I don't think it's complete to what you'd want to know.

Mr. Roberts: I would respond by saying it is complete from our standards. Clearly, you have questions. We're happy to provide any additional input you may require.

Mr. Gordon: Well, I would like to know what the mineral spirits were. I'd like to know specifically on an MSDS sheet what the mineral spirits were. Are they carcinogenic? Are they mineral oil? It could be either.

Mr. Salerno: Are you in possession of any of that knowledge? I mean, why carry this debate any further? Do you know that?

Mr. Roberts: Yes. The assessment with the Phase I was in fact to study a lot of documentation. But, in addition, based on the observations on the site, we did test the soils and we did test the ground water and did sort of go through the logic check of the history of the site. Based on those results, there's no further action required.

Mr. Gordon: Well, I would think that you would want it. I don't think, and I've used this phrase before, we want to see a Love Canal in Shrewsbury. I know I'm involved with another organization that D.E.P. shut down. It was the same kind of gear works. They made them do a Phase II and mitigate by putting wells and aerating the soils. But, that was in the building and around the building. I think that's the important part. I don't think the yard and the ground water are as important as the structure and in and around

the structure. In judging from the pictures that you gave us, I would think that you'd be concerned also. Each one of those barrels probably would be required to have somebody like a licensed carrier take them away at \$500 a barrel.

Mr. Roberts: I can only respond that our test reports indicate that the levels do not exceed the standards that require further action.

Mr. Gordon: They are and they do, but what is there? What is in the ground in the building? What is in the ground around it? Are there carcinogenics there? There is a well there. Where is it and is it closed? Is it a danger or problem? There must have been a cesspool or a septic. Back then it would have been a cesspool. Are there cesspools or septic tanks? I didn't see any of those. Have they been closed successfully? Has the town signed off on them?

Mr. Roberts: There is an on-site septic system.

Mr. Gordon: Okay. Has it been successfully closed?

Mr. Roberts: I don't know.

Mr. Gordon: I think those are things that have to be done.

Mr. Alarie: Usually, Mr. Gordon, if the building were to be demolished, those are the point in time where someone would come in and seek a permit from the board of health to abandon that system. That's the normal protocol for something like that.

Mr. Gordon: Okay. So, it does have to be done?

Mr. Alarie: Certainly.

Mr. Roberts: I guess, again, we are a large public company. We certainly don't want to build a Love Canal for obvious reasons. So, we do take our environmental studies very seriously. Our consultant has been doing business with us for several years. Again, I would be happy to have him address it with you. I apologize that I don't have all of the answers. He's not here, but we'd be happy to follow up. We'll get Nick here and he can answer any questions that you have. It's certainly probably the most highly regulated aspect of our business.

Mr. Gordon: Okay. What about the section of land that may not pass or may have a limited use? What is in that land? Do you know? That would be on the Marane site. There is a section that I think we all have said may have a limited use.

Mr. Roberts: Right.

Mr. Gordon: I would just like to know the mitigations that's going on. What is in that land that makes it have a limited use as opposed to a full use?

Mr. Roberts: The history of this site is one where there have been environmental issues. There has been substantial mediation performed and completed. After that, the remedial actions were taken which was removal of contaminated soil. I don't know the exact technique, but the cleansing of the groundwater. Additional tests were done. Residual concentrations of petroleum hydrocarbons in the soil and groundwater remain. But, the levels of those are what determine that there's not a health risk. But, it determines that an RAO is required so that no one uses it as drinking water.

Ms. Murphy: Excuse me. Where on the site is that located?

Mr. Roberts: Actually, it's primarily where the retail area is. It's sort of this general area.

Mr. Gordon: Can I switch gears?

Mr. Salerno: Go ahead.

Mr. Gordon: I looked at the lighting plan and noticed certain levels around the roadway and some of the parking areas. It's zero everywhere else. Was the one I saw an incomplete lighting plan? Isn't there lighting in the parking areas and on the buildings? What is it?

Mr. Roberts: Yes. The photometrics plan has site lighting throughout.

Mr. Gordon: The one I saw didn't, but maybe I saw an old one. The boulevard was lit, but in among the building and the parking areas it was zero light. Now, I didn't know if maybe it was that you had lights on the building and those were deflected there, but I would think that you would have standing lights in the parking areas, do you not?

Mr. Roberts: Correct.

Mr. Gordon: I don't think they're on there.

Mr. Alarie: I think it's that area between the buildings, the walkways, probably the task lighting for walkway lights, building lights. Between buildings, there's a lot of zero readings where that pedestrian movement probably takes place.

Mr. Gordon: I think it's incomplete.

Mr. Alarie: I think the lighting, the photometric plan, was based on all of the street lighting that was proposed and didn't take into account any of the other task lighting throughout the site.

Mr. Gordon: Excuse me, on your lighting, how tall are the lights?

Mr. Roberts: The light poles themselves, I believe, are 12 ft.

Mr. Gordon: They're very good looking, as a matter of fact. They're 12 ft.? Now, on the edge of the property, would they have shields on the neighbor's side?

Mr. Roberts: Correct. The site lighting that's reflected in the photometric plan sort of reflects our current lighting policy, which is to light the site for safety reasons, obviously, but not light the site as if it's a Wal-Mart or a commercial business.

Mr. Gordon: Like our Lincoln Mercury dealer.

Mr. Roberts: What you have are streetlights that are, again, I believe their 12 ft. They may be 14 ft. They have non-halogen lights. They are shielded so that the light itself is contained within a shield. It directs the light downward and shields the light also so that it doesn't go outward from the site. They are all specified according to updated Dark Sky regulations which are standards that are set to help prevent light pollution.

Mr. Gordon: Okay. But, the lights on the exterior where the townhouses are and the closest areas to the neighbors, could those be restricted to 12 ft. or is that a problem?

Mr. Roberts: No. In and around the buildings it's either sort of a motion sensor light on the building that's probably below 10 ft. or we would propose raised lighting in front of the entrances which are 3 ft. in height.

Mr. Gordon: Who's going to own the project?

Mr. Roberts: AvalonBay Communities.

Mr. Gordon: Is that the major corporation or is that a LLC owned by the corporation?

Mr. Roberts: In this particular instance, it's AvalonBay Communities, correct?

Atty. Schwartz: Yes. The applicant is AvalonBay Communities.

Mr. Gordon: What is that?

Atty. Schwartz: That is the real estate investment company.

Mr. Gordon: So, that is the parent?

Atty. Schwartz: Right.

Mr. Gordon: Okay.

Atty. Schwartz: We're operating under the assumption that that would be acceptable to DHCD as the property owner and that they will not require us to create a limited dividend entity to take title to the property.

Mr. Gordon: Okay. Now, we've all agreed on this particular one that the wording in it will be that this will go for perpetuity and that there will be deed restrictions saying the same. Will we be seeing those as we go along?

Mr. Roberts: Correct.

Mr. Gordon: And are you saying the commercial land will remain for 10 years? That's a reasonable amount of time. I was going to ask you if you would consider 15, but what I would like to ask, if you won't consider that, if there could be an addendum that the Shrewsbury Corporation could have the option after that period of time to purchase the remaining commercial land if you elect not to go beyond 10 years, the opportunity and the option?

Mr. Roberts: I would say that 15 years sounds a lot less complicated.

Mr. Gordon: I would like it the other way, but I understand. I think when you talk about a retail project, it either hits immediately or it takes a while. I think we're all interested, we town people, in not losing our commercial industrial space. Anything we can do to do that we would like to work with you on.

I had a question. It's just a curiosity. The age of your people, generally, that's young children and we did ask for a tot lot. But I was wondering about inclement weather and that, when a mother who might be home alone with her child comes into the clubhouse, does she bring her child into the clubhouse? Where does that child remain? Is there a place in the clubhouse for her to be able to observe her child and yet have the privacy of exercising?

Mr. Salerno: Are you talking about daycare?

Mr. Gordon: No. What I'm talking about is an area that might have a glass wall into the thing. It's not a requirement. I'm just asking what you do with a child. Mother's home alone. Father's home alone and he wants to exercise. You don't want the toddler or the 5 year old or 4 year old running on the machines.

Mr. Salerno: What do they do at all the health clubs? It's the same thing. They either have daycare services.

Mr. Gordon: But, this is a clubhouse for the benefit of a private group of people. I just wonder if you do anything.

Mr. Roberts: Yes. As far as the clubhouse itself, amenities will include an exercise facility and indoor sport court, a basketball court. These are all sort of connected. In fact, with the design, the exercise facility with glass walls is overlooking the sport court. Directly adjacent to that, there's a lounge room with a TV and couches and chairs. So, within that area I would imagine a child could stay.

Mr. Gordon: Are children allowed to go into that area?

Mr. Roberts: Yes.

Mr. Gordon: I mean, some people don't allow them so I was just asking.

Mr. Roberts: Children are allowed. They need to be supervised.

Mr. Gordon: How will there be supervision of their mother is exercising or their father is exercising in the next room? Would that be considered supervision?

Mr. Roberts: I would have to ask our manager, probably not.

Mr. Gordon: So, basically you don't like them coming in? You don't want them coming in?

Mr. Roberts: That's not true. It's designed for all of our residents, children, young adults, empty nesters.

Mr. Gordon: Yes. As I said, looking at your demographics, the kids are going to be from birth to 4 or 5 to maybe grade school mostly.

Mr. Roberts: Statistically, about 50 % of our students are elementary school and 50 % are middle and high school.

Mr. Mahowald: I have a question. The community center will be open during preschool hours? Will the foyer be unlocked? Can people wait there?

Mr. Roberts: Yes. The community center is open during our business hours which are 7 days a week. I have to check the exact hours. In addition, the area that I mentioned, the exercise facility and the sport court and the lounge area, are open by card access 24 hours a day.

Mr. Gordon: I think you were concerned with the kids staying outside on a rainy or very cold day. Will they be able to get in the clubhouse foyer or could we make arrangements for that to occur? What time do our busses pick up, 7:00, 6:30?

Mr. Salerno: It's different for the different ages.

Mr. Alarie: We noted when we toured the Marlboro facility that the clubhouse has a large veranda around the building. That provides some shelter. Would your facility be similar in design to that?

Mr. Roberts: Correct. The stop itself would be a structure that would provide protection from inclement weather.

Mr. Salerno: So, it would be like a shed-type design, the bus stop you're talking about implementing for the school pick-up?

Mr. Roberts: Correct.

Mr. George: Can you just elaborate on the buffer zone between the Southwoods subdivision and your project?

Mr. Roberts: Sure. As I had mentioned before, in our original design, we had tried to accomplish a couple of things, one providing a lower density building type, the town homes, towards the rear and also providing a sufficient buffer zone which takes advantage of the existing vegetation. What we have here as we sort of go along the back of the site, all of these town homes are a 2-story elevation. I did a measurement before the meeting tonight. That is approximately 27 ft. The current zoning rule in Rural A provides for 35 ft. So, we're below the existing zoning. In addition, we've got a 100 ft. buffer which is twice the existing zoning, which is 50 ft. That buffer is actually existing vegetation. Depending on where you are, it's relatively significant as far as the landscaping. Here, as I had mentioned, we had reduced the elevation from 3 stories to 2 stories, again 27 ft. and this has a 100 ft. buffer. These buildings, as I had mentioned, we reduced from 3 ft. to 2 ft., which allowed us to put it on the other side of the street. That's about a 220 ft. buffer and a 27 ft. elevation. Then this building, the rear elevation is approximately 37 ft. So, that's 2 ft. above existing zoning. What we've done here is it's about 160 ft. so we've added additional buffer. As I had mentioned, we've added a privacy fence along this portion to provide further visual buffers specifically for this surface parking.

Mr. Salerno: What do you mean by a privacy fence, Mr. Roberts? Can you be more specific?

Mr. Roberts: It's a solid fence as opposed to a picket fence, 6 ft. tall, vinyl.

Mr. Gordon: Interwoven? Does it go end to end interwoven chain link or is it a solid fence?

Mr. Roberts: No. It's a solid fence.

Mr. George: Where's the chain link fence you said you were going to be putting around the property?

Mr. Roberts: Again, it's more clear on the plan, but essentially it sort of starts in this area and runs all though out the back of the site towards here. Again, the purpose was to prevent pedestrian interaction.

Mr. George: Is any of the buffer that you provided, the new landscape area, going to be elevated at all?

Mr. Roberts: As I had mentioned before, the prior proposal had an additional berm sort of in the back of our neighbors which provide for sort of a 4 ft. berm with 6 to 8 ft. evergreen trees. What we have done is, I have engaged our landscape architect to go in each backyard. We surveyed the backyards. It was clear that each individual back yard has different characteristics so we tried to refine the design. There are certain grade changes that are significant. Certain residents have equipment in the backyard. As an

example, here there has been a pool installed and there's a fence right at the rear. So, to effectively create the berm, we'd need to design additional fill here and then create a berm. So, we took that step and presented sort of individual backyard berm designs. That was submitted about a week ago.

Mr. George: That was done with the residents?

Mr. Roberts: Right, sent to the residents.

Mr. Gordon: Will that be on your land or their land?

Mr. Roberts: Again, the intent was for it to be on their land. I believe the specifics of our current design have a little bit of both.

Mr. Gordon: That's not part of the comprehensive permit?

Mr. Roberts: That is correct.

Mr. Salerno: All right. Well, these folks have been waiting patiently. I think this is a good time to open up for questions from people that are in attendance this evening. Again, we just ask you to do this in an orderly fashion, identify yourself for the audio record, the minutes that are being made. Is there anybody in attendance this evening that wants to comment on this petition?

Mr. Kyriacou: Andrew Kyriacou, 24 Waterville Lane. I just have one question on the traffic. When you did your study, did you take into account what's going to go on through Walnut with the additional housing, the 55 and over, when you were looking at that? There is lots of development going on.

Mr. Bryant: Through the board, we did look at 4 separate background developments. We actually have some pretty aggressive road assumptions in our study. Historically the traffic has grown about 2 % out there. We threw all of the background development assumptions in there and other things in the pipeline, not just what you're talking about, but there are some others in the Boston Hill Project. The actual number came to 5% growth. That's not realistic. That's not going to happen. What we looked at is very conservative, but we do factor in those.

Mr. Salerno: Yes ma'am.

Ms. Garrity: Mary Garrity, 27 Waterville Lane. I have a quick question again in regards to traffic. We started making comparisons between AvalonBay and the Avalon Development in Marlboro. One thing I wanted to point out is that I would assume that it is a very different scenario because just a half mile down the road there's a truck weigh in station, there's a truck refueling area. So, we're not just counting cars, but we're counting semi tractor trailers, moving storage vans, very, very large heavy vehicles traveling at very high speeds which I did mention at the last meeting. So, I just want to reinforce that we're not just counting cars. We're counting huge, huge vehicles. One last

thing, would you be willing to make part of the public record the exact date that the study was done that brought up the blue? Do you have that information available tonight?

Mr. Salerno: You said that it was 2 weeks ago?

Mr. Roberts: If I could just respond briefly. I absolutely agree. It's not apples to apples, Marlboro versus Shrewsbury. They're all different sites. I just pointed it out as somewhat of a similar situation. We do understand and take into account that all factors are different for each site. I would say that in this particular site we do have much better sight lines than we do in Marlboro. There are a lot of different factors. As it relates the date, we're happy to share.

Mr. Bryant: The counts were done on the 21st.

Mr. Salerno: The 21st of?

Mr. Bryant: July.

Mr. Salerno: This year?

Mr. Bryant: Correct. What we'll do is pull all this information which we presented tonight into a memo to the board or you staff, engineering and also Mass Highway.

Mr. Salerno: Yes ma'am.

Ms. Mayer: Greer Mayer, 20 Waterville Lane. On the same issue, is there or is there not going to be a light at the Boston Hill area? I think I had read that there will be a light there. We you think about a light being not more than, what, 8 car lengths from where Walnut Street. I go to the gym every morning at 7:15. I just have to make a turn and turn again. I can't imagine what it's going to be like with the traffic and the trucks backed up down Route 20. The traffic coming in from Avalon, and we don't use Avalon, we use Walnut Street. That's the street that we come and go on. If you have a light at Boston Hill that stops traffic, it's going to back up to South Street at a minimum. Then trying to get across, particularly if they widen it right at that area to make a left turn for those that need to go, I guess it would be south to Auburn, just be aware that that light is going to impact Walnut Street a lot more than it is now.

Mr. Salerno: Yes sir.

Mr. Abrams: Peter Abrams, 21 Waterville Lane. Just to clarify on the landscaping plans and this, Mike, is more for you. In fairness, we did receive and I received a landscaping plan for my backyard, but I had no input whatsoever to the landscape or Avalon on that plan. Again, going forward, as we get closer on this project, especially since a bunch of it is proposed to be on my property, I would expect that we would be working directly with the landscaper on those plans?

Mr. Roberts: That is our intent. It was an effort on our behalf to sort of take it one step further. Certainly that would be our intent at moving forward.

Mr. Salerno: Mr. Brackett.

Atty. Brackett: Mr. Chairman, Gary Brackett, Esq., for the neighborhood association. One question I had regarding the calculations on the setback. Were those calculations from the foundations of the buildings in each of the 3 or 4 categories described to the foundations of the abutter's buildings?

Mr. Salerno: I think it's the property line, isn't it?

Mr. Roberts: The calculation are from property line to the foundation of our buildings.

Mr. Gordon: I have a question for the building inspector. I realize that the back part of this property is Rural A. The front part is Commercial. Commercial abutting residential requires and extra 50 ft. which would come to the 100 ft. Is that correct?

Mr. Alarie: That's correct.

Mr. Gordon: Is this whole project considered to be commercial?

Mr. Alarie: Certainly not. You have the 2 distinct zoning districts. The comprehensive permit, in essence, disregards that whole zoning scheme. You have the 2 categories in that Rural A District, single family homes and all other uses. The setbacks for all activities within that zoning district vary. Those would be the standard dimensional requirements that would apply to any type of development. But, I think the 40B provisions allow them to exceed or waive those.

Mr. Murdock: David Murdock, 19 Waterville Lane. Can we be provided a copy of the lighting plan? The Southwoods residents haven't been given one.

Mr. Salerno: Do you have that plan completed?

Mr. Roberts: What we had submitted we would certainly be happy to make public record. It sounds as if you would like a sort of further detailed plan which we would be happy to make public as well. I think, from Mr. Murdock's perspective, the most important thing would be the site lighting which is on that existing plan.

Mr. Salerno: There was some issue, I think, initially at that last meeting. I think you addressed it too as to the type of lighting involved. I think you put it in your letter. I'm not sure, Mr. Murdock, if you got a copy of that or not.

Mr. Murdock: We asked for the plan on lighting. I think Mr. Roberts said what type of lighting they use. We had also referred him to our attorney, but there is a specific type of lighting that is sort of yellowish in nature versus the white that appears bright in our windows at night. I'm not a technician by any means. I don't know the terminology.

Mr. Salerno: Mr. Roberts submitted in writing that he will be able to successfully satisfy your concerns with the lighting in his letter.

Mr. Murdock: Again, we haven't received a copy of the plans.

Mr. Roberts: I would say I've learned a little bit more about lighting than I knew before. We do use nonhalogen. The yellow lighting I think they're referring to is sodium lighting. The color is determined by the gas that's used or whatever is used. We actually use more of a white light which we find is more of a natural light. But, it is a nonhalogen. It doesn't have the glare and the light fixtures are shielded.

Mr. Salerno: I think we reviewed that at the last meeting that you were going to provide shields as it approaches the residents. Is that accurate?

Mr. Roberts: Correct.

Mr. Salerno: Mr. Brackett.

Atty. Brackett: Mr. Chairman, Gary Brackett, again for the record. Through you, the question I guess relates to the buffer and the berm area. As I recall Mr. Robert's statement, he mentioned that he expected that that condition would not be incorporated as part of the comprehensive permit. Do I understand that correctly?

Mr. Salerno: I believe so. I believe it was because of the uniqueness for each property was the explanation given. Is that accurate?

Mr. Roberts: That is correct.

Atty. Brackett: I believe that he indicated that the most recent proposal involves placement of some of the berm and buffer on both property of AvalonBay as well as some of the private property so there is sort of a shared area there?

Mr. Salerno: If it's going to be for each individual landowner and it's going to be something that's going to be agreed between Avalon and each individual landowner, I don't know how we can have one plan that's going to address everything. Some people may want that. Some people, in the example given where there is a pool or fencing there, may not want it. I think it would be difficult for us to address each and every lot.

Mr. Gordon: Especially on private land. It's a private matter between parties.

Atty. Brackett: That brings me to my next question. Mr. Chairman, through you, as to the reason that the applicant is not willing to place the buffer, both the berm and the planting area, on its property and maintain it at its expense as a condition of your decision?

Mr. Salerno: Again, I'm not certain every landowner wants that. I don't think we're privy to what discussions have been between each landowner. I understand that you have a plan for each lot that abuts you?

Mr. Roberts: Correct. As it relates to the buffer on our side, as I've mentioned before in many instances, that would involve cutting down trees to plant trees, which just doesn't make sense to us. In some instances such as here where there is a pool and a fence, the fence is essentially at the property line so we're proposing, on our property, filling behind the fence to bring that portion up to grade and then planting a berm. So, I guess from our perspective, we're just taking it on a case by case basis and doing what makes the most sense.

Mr. Salerno: But, the things that are consistent to each abutter, perhaps to answer Mr. Brackett's question, is the chain link fence and, in the area where we have the parking in the back, there's going to be a privacy fence for those abutters?

Mr. Roberts: Correct.

Mr. Salerno: Outside of those 2 measures for the abutters, you are negotiating on an individual basis with each landowner or designing a plan for each abutter?

Mr. Roberts: Correct.

Mr. Salerno: I don't know if that answers your question, Mr. Brackett?

Atty. Brackett: Somewhat Mr. Chairman, but I guess what I would just like to throw out at this point for the board's consideration on this issue is, if each of the property owners and the applicant reaches agreement with respect to the improvements to be made on the common border between the properties, whether it's partially on the private property owner and partially on Avalon's property, I would suggest that those plans and that agreement could be reduced to writing and incorporated in and made part of your decision. Therefore, rather than having a situation where several property owners would have to bring separate enforcement actions if there was a violation somewhere down the road, there would be protection to the abutters under the comprehensive permit. I believe in the same fashion that the applicants making obligations for improvements off-site for parts of the community, that those obligations can be enforced just as this landscaping can be enforced. I'll leave it at that. Thank you.

Mr. Salerno: Okay. Well, I think you've said in July 16th correspondence and responding to Mr. Murdock's inquiries you said specifically in paragraph 5 that you would have a set of individual plans for each homeowner that contained a specific design early next week, which would have been about a week ago. I assume that's behind schedule?

Mr. Roberts: No. That has been delivered.

Mr. Salerno: To each individual homeowner?

Mr. Roberts: Correct.

Mr. Salerno: Is there anybody here that received one of those plans that is not satisfied or wants to address it? Sorry I asked. Sir, back there, yes.

Mr. Shapiro: Mark Shapiro, Lot 21. Regarding a June 18th correspondence, a buffer was proposed to screen lot 21 as well. We have not received any proposal from AvalonBay.

Mr. Gordon: Does Lot 21 abut Avalon's property?

Mr. Salerno: Yes.

Mr. Gordon: I see Lot 22 is where you end, is it not?

Mr. Roberts: This is 23 and 22. I think 21 is here.

Mr. Salerno: Mr. Shapiro, are you a direct abutter?

Mr. Shapiro: We initially received a notification.

Mr. Alarie: He could still be a second or third abutter based on the criteria of the statute.

Mr. Salerno: To 300 ft. Ron?

Mr. Alarie: Mr. Shapiro, do you have a large drainage easement across your lot?

Mr. Shapiro: Yes.

Mr. Alarie: He probably has that property to the left side of Lot 22. The house is further up off of the plan.

Mr. Salerno: Yes. You can't see it.

Mr. Roberts: Obviously, Lot 21 does sort of progress backwards from our site. Our original proposal had a berm sort of in this area. What we have done is essentially eliminated the berm and put up the privacy fence here. You are correct. We did not propose sort of a separate backyard landscape buffer in that area.

Mr. Salerno: So, there's still the possibility of the privacy fence, chain link fence, in a berm being in place for the abutters based on the individual plans that you've drawn for each lot?

Mr. Roberts: Based on the individual plans, however, we did not feel that that additional berm was necessary for Lot 21 due to its orientation and the privacy fence.

Mr. Salerno: But, those other 3 measures could actually be in existence for each abutter?

Mr. Roberts: Correct.

Mr. Kyriacou: I'm sorry to beat a dead horse.

Mr. Salerno: Just your name again?

Mr. Kyriacou: Oh, Andrew Kyriacou, 24 Waterville Lane. You took into account the developments that are going on to your computer model. So, therefore, it would seem then that the comments that you made about the differences between the computer model and what the actual count is not always correct. It sounds like based on taking that all into account, the red line would be accurate.

Mr. Roberts: I would say that assessment is incorrect. Again, I think the accuracy of the computer model has been proven as it relates to counts and trip generation. It's just where it calculates delays the illustration was that it is flawed. Certainly, you're not waiting 20 minutes at Walnut Street as the computer model says. It's more like 50 seconds.

Mr. Kyriacou: But, those cars aren't there presently. That's the question. The count cars are technically what're in development today. We know there's going to be a 55 and over on Walnut Street. We know there's an access way to the Boston Hill property for another development. So, technically, the counting of the cars is what's today is going back to what will be the traffic on those additional in terms of development. So, we're not comparing apples with apples because you mentioned the red was the computer model taking into account all of what will be there in terms of development. What we're saying is, well, don't think about that, just think about what currently is what we're counting cars, but what you can't count are the cars that will be there based on what is the plan of development.

Mr. Salerno: I think they used a criteria, was it .65 vehicles per unit?

Mr. Bryant: We projected traffic for the development and we projected for the area development that's in the pipeline. That's all considered in the traffic study. That's all part of the analysis that we went through and have reviews by Mass Highway. I think what you're trying to get at, and again, what we presented in the red and blue was to demonstrate that the model does tend to overstate the delays at unsignalized intersections. It's not meant that to Mass Highway. To the extent that this other development's happening, yes there is delay here for our left and it will get worse. But again, our left turn volume is similar to others along that road. Everyone is going to experience the same sort delay due to other development which we had nothing to do with.

Mr. Kyriacou: I agree. I'm just saying that if you're going to take into account for left turns of the new additional, because we already know what new developments will be there, it doesn't seem likely because you're saying what we counted on the week in February, what we counted on in the week in July, don't look at the red because that's not accurate now. We're not taking into account what the additional traffic is going to be and the additional time. So, your F rating is actually going to get worse, technically, because now you're have those additional amounts of housing and units making left turns which is going to be 40 left turns coming out of Avalon as well. That's something I'm not hearing as what may be addressed.

Mr. Bryant: Again, that scenario was addressed in the study. The point is, we're not starting, what our recent count shows, we're not starting at that. We are seeing delays

that are much less than that condition. Yes, those delays will get worse as all of this development happens. You're absolutely right, things will get worse. What we've said is we're not starting necessarily at an F. Don't believe what the computer model said about the existing condition because it's overly conservative. Things will get a little worse as time goes on, but no worse than any other unsignalized intersection on this roadway.

Mr. Salerno: Again, right at the beginning, the first question we asked you was the criteria you used. You came out with your statistic that you based it at peak hours. I think, was it .65?

Mr. Rosen: It was .65.

Mr. Salerno: It was .65 trips per unit. I think we came out roughly with 180. What would be the number you would use for the other developments? Would you use the same number, the .65 per unit, for a household or was there a different number used?

Mr. Bryant: The .65 was specific to the Avalon proposal.

Mr. Salerno: Okay.

Mr. Bryant: That's the specific land use program that IE has studied, that we have studied extensively and keep coming back to that same number.

Mr. Salerno: Now, for the other proposed developments, what was the number?

Mr. Bryant: For the other proposed developments?...

Mr. Salerno: Did you use the .65?

Mr. Bryant: They're different uses. We wouldn't do that. Boston Hill is office space. That's a different number.

Mr. Salerno: What's the number that you used?

Mr. Bryant: That's approximately 1.75 on office space. Now, that number isn't the number we generated. There was a traffic study done for that project. We looked at it and pulled their numbers out and, obviously, checked to see if they're reasonable. But, you use a different number for different land use.

Mr. Gordon: How about the YMCA? What number would you use for the YMCA?

Mr. Bryant: I'll need to go back and look at the Boston Hill Study, but there are counts of YMCAs. We've done 2 or 3 of them. I don't recall the numbers, but it's the same process. You find an existing facility and figure out how big it is. You count the cars. We were down on Cape Cod in Barnstable on 132 counting the YMCA there because they're looking to expand. The same question was asked as here. How much more

traffic? We said there's this much traffic. Here's the size of the building and here's the membership. It's going to grow membership 30 %.

Mr. Salerno: When you came up with your ratings, to try to bring some closure to this, you didn't take one factor and use it and plug it into each development. You took what was designated in your criteria for those types of developments to come up with the rating?

Mr. Bryant: Correct. Everything is land use considered.

Mr. Salerno: Okay. I don't know if that answers your question.

Mr. Lade: Herb Lade, 1 Lahinch Lane. I just want to come back to that because I think there's a lot of confusion around this traffic study thesis. So, if I can just ask a question? The data that you were showing a minute ago with the red and the blue, those are basically 2 different ways of looking at the current situation?

Mr. Bryant: Correct.

Mr. Lade: Right. So, you took the current situation, exclude adding anything, just what's traffic today and you run it through. What does the model say is going to be the delay and what are you seeing for actual delays at those intersections, ignoring any developments or anything like that. So, that's what that figure represented?

Mr. Lade: Apples to apples to demonstrate that it was viewed with some suspicion in the operating percentage?

Mr. Bryant: That's right. So, it's just purely just a exercise when you can pick when you compare a model to reality. The model can be significantly higher. So, when you look at existing conditions, that's what's going on. Elsewhere in your report data that we haven't necessarily seen here discusses what happens when all these developments come on line, Avalon comes on line, the other developments come on line and then what happens to those times as those developments come into place. But, we haven't had the opportunity to provide that data here tonight.

Mr. Lade: I just want to make sure.

Mr. Bryant: There's what's caused some of the confusion here. The data that we're looking at here is not some projection of future time. It's what is today. The study itself discusses what's going to come in the future as these come on line. It will get worse than the data we saw there because that's today and there are additional trips to be added.

Mr. Hodge: Mike Hodge, 14 Waterville Lane. Point six five trips per unit, is that the number you said?

Mr. Bryant: That's the number I said.

Mr. Hodge: So, out of 100 units, 35 of them don't leave for the day?

Mr. Rosen: That's just during peak hours.

Mr. Salerno: That's just during the peak hours.

Mr. Hodge: Okay.

Mr. Bryant: During that hour.

Mr. Hodge: Okay.

Mr. Bryant: Not everyone leaves their unit at exactly the same time.

Mr. Hodge: Sixty-five percent of them leave during the rush hour and the other third leave at 6:00 A.M., 10:10 etc. Okay. Those were national? You got those from Washington? It's a national number?

Mr. Bryant: It's a national number verified locally.

Mr. Hodge: Does that take into account people who live in Boston because there are a lot of apartment complexes in cities. They might not leave at all. Was there a study done on small towns?

Mr. Bryant: This is suburban based development. When we're talking about urban development, we're typically talking high rises. If you're in Boston, you're probably a 5, 10 story taller building. We treat that as a separate menu category. We have separate trip rates for that type of use. Secondly, we are aware that transit becomes an option for them. Our studies, the IT studies, are all based on suburban type settings where people drive to work.

Mr. Gordon: I would like to just shift a little bit. I'm concerned in a permit that we might be involved in private matters. I wonder how the housing, what is it DHCD?, looks at these things? If there were going to be considered any part of a permit, I would want, number 1, that the town is absolved of any and all liability and is held harmless from any item that might occur because or as a result advertent or inadvertent for the terms or the private things you do. Therefore, I don't think they should be part of the comprehensive permit.

Also, from a practical point of view, they raise the cost of your site and might throw it into a point where you would consider it not acceptable. So, I don't want that on us. I want that on whoever you do it with. I want to see that we're held totally harmless and not a party to it. That would be my recommendation to the board. Do you have a problem with that Mr. Schwartz?

Atty. Schwartz: No.

Mr. Salerno: Mr. Brackett.

Atty. Brackett: Mr. Chairman, just a point of information through you to Mr. Gordon. In 1993, the legislature amended Chapter 258 Section 10 of the Mass General Laws, which is the Massachusetts Tort Liability Statutes, and incorporated within that statute immunity from liability for tort claims for individuals or municipalities involved in the permitting process. So, I would suggest that the protection you seek, Mr. Gordon, already exists as a matter of law in Massachusetts and that we do believe, and I would suggest this based on experience dealing with comprehensive permits ranging in size from 32 units to 640 units in communities as small as Bolton and as large as Framingham and Woburn and Burlington, that you can incorporate these conditions in the decision and that they are enforceable conditions. Unless the applicant appeals the conditions to the Housing Appeals Committee, they are enforceable by this board and the building inspector pursuant to Chapter 40B.

Mr. Gordon: Well, that's my concern, that it's appealed the HAC and it puts the thing into an expense that HAC believes is unreasonable, because, as you well know, the 3 items are accept, accept with conditions or deny. If you deny, HAC is not your friend.

Atty. Brackett: Right, but my understanding is that we're really not talking about the expense of the improvements we're talking about on whose property the improvements will be made and then who's responsible for future maintenance of those. Obviously, before the board could conclude that that would represent an uneconomic condition or before the applicant could make that argument, there would have to be some representation in it's financial pro-forma that the cost of this particular item. And I think the only difference we're talking about here might be future maintenance because it seems as if they're willing to make the improvements on my client's property. They really don't want it all on their property and they don't want it in the decision. So, that dollar figure should already have been calculated within the project cost. We're only talking here, I think, about future maintenance.

Atty. Schwartz: May I respond to that? I think that the issue is, if I understand you Mr. Gordon, your concern about liability, which I think has some merit and also the issue of economic conditions? For us, I think the reason that we preferred to keep it outside of the comprehensive permit is because, as Mike explained earlier, it doesn't make sense to... have each of these situations with each of these abutters is unique. In some cases, it will make sense to do the improvements entirely on Avalon's property. In some cases, it will make sense to do it on the abutter's property. In the absence of an agreement, which is really outside the scope of this hearing, I believe it's fair to say that you cannot impose a condition that we do improvements on somebody else's property, particularly without knowing whether that property owner has consented to that. So, what we're suggesting is we're more than willing to do it, but outside of the comprehensive permit.

Mr. Salerno: To join with that the maintenance? Are you going to need permission or an easement to go on and maintain it on somebody else's property?

Atty. Schwartz: Right. So, what we're suggesting is, and this process is already started, already underway that we have proposed improvements that are, we believe, appropriate for each abutter. We're more than willing to sit down with them individually and collectively and continue to work on that as we go through and design the project further.

We are more than willing to talk with Mr. Brackett as representing the neighborhood, but we feel it really is outside the scope of this hearing and the permit.

Mr. Salerno: Well, I'm sure what Mr. Brackett's concern is is that it is left outside of this. What enforcement or what duty will there will be for you to finalize those agreements with the neighbors?

Atty. Schwartz: I believe that we can have ironclad agreements in terms of our maintenance responsibility that would bind Avalon as the landowner and could run with the land. There are plenty of ways that Mr. Brackett and I could work that out. I would only suggest to you, you know the flip side of that is that we're working with the neighbors and we hope that we work out all of our issues with the neighbors.

Mr. Salerno: The neighbors would like that done before this is done.

Atty. Schwartz: And so would we. It's absolutely mutual interest to have all of that worked out for obvious reasons. We don't want to take a chance that one or more of these neighbors will be so disgruntled as to have to exercise their rights. That's not in our interest to do that. I don't think, with all respect to Mr. Brackett, it's appropriate in the absence of such an agreement, which we're working on, for the board to impose those conditions.

Mr. Salerno: It's a little cumbersome. Is there anything further? Yes ma'am.

Ms. Garrity: Mary Garrity, 27 Waterville Lane. Are we then, to clarify, considering the privacy fencing to be part of the landscape that is a private matter potentially or are we considering the privacy fencing to be part of your approval because that gets into safety issues and things like that?

Mr. Salerno: I don't think there's any doubt that it's part of what's coming here.

Ms. Garrity: That's one of the aspects that the neighbors are very uncomfortable with is that most of the privacy fencing is 4 ft. chain link, which in our opinion is not private at all.

Mr. Salerno: We asked them initially, I think when they first made their presentation, to define for us what privacy fencing was. I think you said that it was a 6 ft. solid constructed fence.

Mr. Roberts: Yes.

Mr. Gordon: There are 2 fences here.

Mr. Roberts: Two fences.

Ms. Garrity: But that's just one small section. The majority of the fencing isn't, in our opinion, private.

Mr. Salerno: The only area reference with privacy fencing is around the parking lot.

Mr. Roberts: Privacy fencing in this area. Chain link fence in the back here, which my recollection of the discussion was that there was a concern about preventing pedestrian access between the two neighborhoods. You know, the intent has been to supplement the chain link fence with the individual buffers that we have been speaking of.

Mr. Salerno: Would you define the chain link fence, its dimensions?

Mr. Roberts: Four foot chain link fence.

Ms. Garrity: I just wanted to add that, when we spoke about privacy fencing in all of our conversations and at the last hearing, we don't mean a 4 ft. chain link fence. We would like to see privacy fencing the entire length of the project that abuts our property.

Mr. Gordon: Mr. Chairman. What do you consider privacy fencing? Can somebody tell us?

Mr. Kyriacou: Can I speak? This is exactly the fence that's behind Mr. Murdock's property. It's throughout the entire 6 ft. So, instead of just being a 4 ft. fence on 98 percent of the property, what we neighbors are asking for is that same fence that is going behind Mr. Murdock's property to be throughout the whole back area.

Mr. Salerno: So, replace the chain link with a privacy fence?

Mr. Kyriacou: A 6 ft. fence

Mr. Salerno: Make it real simple.

Mr. Roberts: The official request in the correspondence was an 8 ft. fence throughout the back. And then in addition, moving the landscape berm from their properties to our property.

Mr. Salerno: I saw that.

Mr. Gordon: Would you consider a 6 ft. fence?

Mr. Roberts: In lieu of the landscape buffer, sure.

Mr. Salerno: No, the chain link.

Mr. Gordon: No, in lieu of the chain link fence, not in lieu of the buffer.

Mr. Roberts: We would consider that, but to do that and do the landscape buffers is doing 2 things to solve the same problem.

Mr. Salerno: So, if we're to understand this landscape buffer, then that's a term of art that's going to bring a screening to the same height as a 6 ft. stockade fence?

Mr. Roberts: The buffer, as designed, would provide a 4 ft. berm with 6 to 8 ft. trees. The landscape buffer would be a little bit taller.

Mr. Salerno: Six to eight foot trees when they're planted?

Mr. Roberts: Yes.

Mr. Salerno: How far apart?

Mr. Roberts: No further than 8 ft. I think. Something like that.

Mr. Salerno: Mr. Murdock.

Mr. Murdock: Again, for the record, David Murdock, 19 Waterville Lane. I think the purpose of our request that we put in writing, and have obviously come to the board, there are 2 purposes for both fencing and berms. The fencing of concern to us because of not just privacy issues and the fact that we don't necessarily want to see cars and a parking lot or people walking through. It is a measure of safety as well. We have young kids, as we mentioned the last time. It's a means of trying to impede somebody coming through our property or into my yard or anybody's yard, for that matter and coming down our subdivision. The fence serves a purpose of privacy to a degree as well as safety to a degree.

The berm serves a secondary or separate purpose. The berm serves the purpose of the fact that the woods that are currently there, which are going to be dramatically cut down because of the development, the woods are deciduous trees that clearly come the fall and winter and spring time we're going to be looking directly at apartments or at developments and units. The berm serves the purpose of trying to help us blockade our view and continue with as much privacy from a visual aspect of what we see from abutters. So, in our minds, which again we put in writing, they serve 2 purposes. It serves a purpose of privacy and safety. It serves a purpose of really visual affects that are going to be lost due to the development, both structures and destruction of the current landscaping that's there.

Mr. Abrams: Peter Abrams, 21 Waterville Lane. Just to add to add to that. When we started this process or when we went through the first portion of this hearing, we talked with Mike. It was not an issue for any of the berming and the landscaping and any type of fencing that we wanted. That's really what he said. Chain link fencing is not asthetically pleasing to me. I really don't want a chain link fence in our backyard. Again, a 4 ft. fence, as a kid I jumped over a 4 ft. fence in 2 leaps, doesn't keep kids from going through the yard.

Mr. Salerno: The issue becomes that each person starts tailoring what's going to separate your property from theirs. Somebody wants a 4 ft. fence because they don't want transitory movement between the residents of that in their neighborhood. Somebody else doesn't want it because it doesn't look good in their backyard. Somebody can have a berm. I think you have to kind of get together and work out what works for the majority

of you so that there is some uniformity in the development because you're not going to have a berm with 8 ft. trees on it in one yard dropping down to a 4 ft. fence.

Mr. Abrams: Well, I think from a fencing perspective, all the abutters are in agreement.

Ms. Garrity: We've already sat down and established that.

Mr. Salerno: Yes. We saw the letter, but it asked for 8 ft. fencing.

Mr. Murdock: There's nothing wrong with a person asking for the moon and not getting it. But, second of all, there is a purpose.

Mr. Salerno: There is a problem with that. It takes forever. I have to streamline it

Mr. Murdock: I appreciate that. That's not our intention by any means. But, at the same point in time, there is a reason why all of us have hired an attorney to speak on our behalf in one voice for the entire abutters and the entire subdivision. So, it is not our intent to try to have each and every single person cause 7 problems up and down Waterville Lane. It's to try to create some uniformity to what it is that we all are asking you.

Mr. Salerno: That's in your best interest to do that.

Mr. Murdock: To voice our demands and to try and put that together in terms of a landscaping. Very clearly, again, I would echo what Mary just said that none of us like the chain link fence. We didn't ask for this. In all candor, I think we appreciate what Mr. Roberts and Avalon have done by putting together a landscaping plan. But, in no point in time did they ask us for our opinion. In no point in time did they say "What do you think about this or can we walk your site with you and ask you what is there." One of our neighbors, I know, is proposing a pool. Clearly, that's going to interrupt their plans. I think the landscaping plans were simply mailed. They were mailed, here you go and to a degree, was a take it or leave it situation. I don't think that's good cooperation. You have asked them to work with us.

Mr. Roberts: If I could just comment. The plans were mailed. I took the liberty of taking a week off. So, I wanted to get them out before hand. In my correspondence, the intent was "Here's a refinement of the plan. I look forward to discussing it with you prior to the hearing." We just simply haven't had a chance to discuss it individually. I got back on Monday and left a message, but everyone's busy. It's the summer and we haven't had a chance to discuss it. It is our intent and we just took it to the next level.

Mr. Gordon: Mr. Chairman, it's obvious that this hearing is going to be continued for at least another time. My suggestion would be the neighbors have an attorney, Mr. Roberts has an attorney. So, before the next meeting, why don't they sit and come back to us with a plan and tell us what their plan is going to be, even if it's going to be outside of our plan. At the same time, Mr. Roberts has got some things to bring to us. We can also have a punch list of the things we want to make sure get covered in our decision. We'll have some time to discuss that and to discuss it with our consultant. That would be my suggestion. If this is going to be outside the permit, let's know it's going to be outside.

But, if it's going to be inside, let's decide that also. If we're going to impose a fence or attempt to impose a fence, let's not do it until after they have discussed it.

Mr. Salerno: Well, it's my understanding that the terms that are being submitted to us are the 4 ft. chain link fence around the boundary lines and only the privacy fence around the parking area. That's all you're committed to at this point.

Mr. Gordon: With us.

Mr. Salerno: Is that correct?

Mr. Roberts: Correct.

Mr. George: And the berm and the landscaping?

Mr. Roberts: Again, would like to review that with each of the neighbors individually.

Mr. Gordon: I would like to see them sit down and come back to us at the next meeting with whatever they work out.

Mr. Salerno: That's not going to change? What you're going to agree to with the individual property owner's are those landscape plans? How's that going to change between now and the next meeting?

Mr. Gordon: I don't know. But, let's give it the opportunity.

Mr. Salerno: Let's put it on a time table too, though.

Atty. Brackett: Mr. Chairman, on behalf of the neighborhood, Gary Brackett for the record again. I would be willing to have a meeting with Mr. Roberts and Mr. Schwartz to try and address these issues. Just to respond to a comment made though, if the board in its final analysis determines that we've reached an impasse and the board's not satisfied with what's being proposed, the board, as a condition of its approval, could address either through input from some of your town departments or your consultants, the type of buffer that would be appropriate. So, we're willing to sit and meet before your next meeting, as Mr. Gordon suggested, but if we can't reach agreement, I think the board has a right to impose reasonable conditions that don't render the project uneconomical.

Mr. Salerno: If I could respond to that. I don't disagree with that, legally, at all. I think that's right on the money. The issue is this. This board has the authority to impose those conditions on their property, not on somebody else's property in the absence of their agreement. Secondly, it just doesn't make sense from any kind of common sense point of view to impose those conditions which are for the direct benefit of these abutters in the absence of an agreement with those abutters. I leave that for you to ponder. My response is no, but obviously, but that's something we can all think about.

Mr. Salerno: How many separate abutters would you have to enter individual agreements with to develop a buffer?

Mr. Roberts: I think that has yet to be determined.

Mr. Salerno: Well, including Lot 21 for the sake of being conservative?

Mr. Roberts: Eight.

Ms. Garrity: No. We want to include Lot 21.

Mr. Salerno: I said that.

Mr. Gordon: That would be 8.

Mr. Salerno: What's the likelihood of you having 8 individual agreements in place between now and the next time there's a meeting?

Atty. Schwartz: I think it's very helpful, actually. I think it's extremely useful in the fact that the neighbors have all agreed on hiring one attorney. It's a good sign. I'm willing to sit down with him as soon as possible.

Mr. Salerno: Hopefully, abutter A and abutter B agree when attorney C is representing them. That will be the first time that happens by the way.

Mr. Gordon: Mr. Chairman? At that same time, I think we would like a letter from AvalonBay acknowledging they realize that our decision will be in perpetuity and have agreed to it. Also, that the land is going to be 15 years and not 10 and anything else that might be appropriate for them to bring to us prior to our writing our decision so that we have certain agreements prior to our putting the decision into words.

Mr. Salerno: You've committed to that on the record tonight?

Atty. Schwartz: Yes. As far as the perpetuity, I believe it's certainly part of the LIP application, if not part of the 40B application. It might be in both.

Mr. Gordon: Reaffirmation is always a wonderful thing.

Atty. Schwartz: No problem with that.

Mr. Salerno: He hangs these letter up in his house.

Mr. Gordon: I do. I use these. Also the fact that, wherever you want to put it, the land is going to remain for 15 years and not the 10 and that, if you do reach agreement with the individual landowners in spite of whatever statutes might exist, you absolve the Town of Shrewsbury from any responsibility in private agreements you might have with anyone else that we're not a party to.

Mr. Salerno: The individual agreements aren't going to be incorporated into this. Nobody from the town is going to be signing or made a party to it.

Mr. Gordon: I always want to make sure.

Mr. Salerno: Mr. Alarie, your thoughts on dates?

Mr. Alarie: I have some dates, but I think it's going to be more contingent upon Mr. Schwartz and Mr. Brackett meeting and probably coming back to us and saying they are ready to proceed. I don't know if that's the way that you want to do it or I have some dates at the end of August. We have the 24th, the 26th

Mr. Salerno: Things tend to get done when there are deadlines.

Mr. Rosen: I agree.

Mr. Salerno: I don't think there's any more room on the August 3rd agenda.

Mr. Gordon: I'm tied up for the 5th.

Mr. Alarie: I have September 1st, 2nd and 3rd available. The room is available.

Atty. Schwartz: May I just ask? In terms of the proceedings, I'm hearing that the proposal is to keep the hearing open while we try to resolve these issues, but I don't expect there would be any new substantial evidence that would be presented at the time. Just for the board's consideration, as a potential for closing the hearing tonight, Mr. Chairman, given your point about nothing sharpens the mind like the guillotine, that would impose on all of us the 40 day period. I would just suggest that for your consideration.

Mr. Gordon: You still have things to bring to us. I would rather not close the hearing until after all of the things that we've asked to have been brought to us.

Ms. Murphy: The photometric, more detailed photometric plans. Didn't we talk about that?

Mr. Gordon: The 21E situations, if there are questions, getting them answered. I think that you could acknowledge that a half an hour before the meeting isn't time enough for us to do it. As I understand it, it was submitted to the board of health today. She wasn't in today so I don't think that she had a chance to review it.

Mr. Salerno: Is there going to be a Phase 2 environmental study? You just have to answer audibly, just so we have the record. It doesn't tape down.

Mr. Roberts: It's not our intent.

Mr. Salerno: Okay. So, you're not going to do it?

Mr. Roberts: It's not our intent. ...

Mr. Alarie: Perhaps if we keep it open, at the next meeting if there are questions that Mr. Gordon still has, the environmental engineer could be present and maybe address those?

Mr. Salerno: Maybe we could submit the area of inquiry to the petitioner between now and the next meeting because, if he comes in that meeting and doesn't have the answers, it doesn't leave us any further down the road. I would like to see any inquiries of the board go to them within the next 2 weeks just to keep this thing on track.

Mr. Brackett?

Atty. Brackett: Mr. Chairman, I just had question regarding the procedure that you're going to abide by regarding closing the hearing. Having recently been engaged by the neighborhood group, I've a short presentation I would like to make to the board. I would be happy to make it to you at the next meeting, if you prefer, rather than tonight. But, it does raise some issues regarding the sufficiency of the application, whether the application satisfies the requirements of Chapter 40B and the CMRs. If the board is giving a punch list of tasks to the applicant, I would be happy to make those comments this evening or unless you'd like me to wait. I would caution you against closing the public hearing if there's any outstanding information needed.

Mr. Salerno: I don't think there's a suggestion of closing it. It's a suggestion of getting a date on which it would be the final hearing closing. But, I guess my question is and members of the board, I would prefer if the board's available to hear you this evening because if there are matters we want to add to our punch list to go to them, like anything else, I want to give them the questions and the opportunity to prepare a satisfactory answer to them so that the next time we come here. If not, we'll get back to you on that or we have a new area. So, when you say "short", Mr. Brackett, is that short as in attorney "short" or is it short?

Atty. Brackett: I will assure you and the board members that I will try to be reasonable with my time if I could take Mr. Schwartz's position for a few moments and give you some information.

Mr. Rosen: Before you go, I just want to ask one question. One of my concerns at the last hearing was the expiring use at Avalon Arbor. Have you had any further discussions with the town?

Mr. Roberts: I've had further discussions within Avalon. I've done some research, frankly research I wish I had done prior to the other hearing.

Mr. Rosen: Correct.

Mr. Roberts: It all relies on what the comprehensive permit says. Based on our view, affordability is not going away at Avalon Arbor. I believe if you have had an attorney review it on your behalf, if and when you do, they will come to the same conclusion.

Mr. Gordon: So, that will be it? That will go with the Ardmore decision would you say?

Mr. Rosen: Okay.

Mr. Roberts: Correct.

Mr. Salerno: So, the ambiguity falls in our favor?

Mr. Roberts: Correct.

Mr. Salerno: Okay.

Mr. Roberts: You don't plan on challenging the Ardmore decision?

Mr. Roberts: I'm sorry?

Mr. Rosen: You don't plan on challenging the Ardmore decision down the road?

Mr. Roberts: We do not.

Mr. Rosen: Okay.

Mr. Salerno: Mr. Brackett, why don't you just pull a chair right up here at the end of the table and get going.

Atty. Schwartz: Do you want to come here?

Mr. Salerno: You might want to make notes, Mr. Schwartz, because I'm sure there will be some items Mr. Brackett wants answered.

Atty. Schwartz: Thank you.

Mr. Salerno: Having a civil relationship, we feel that you can share the same table.

Atty. Schwartz: I haven't met Mr. Brackett, but he seems like a nice enough fellow so I'm happy to do so.

Mr. Salerno: Well, we'll reserve comment on that.

Atty. Brackett: I did say nice things about Mr. Schwartz to all my clients.

Mr. Chairman and members of the board, by way of background, I'm Gary Brackett of the firm of Brackett Lucas, 19 Cedar Street in Worcester. I represent 23 families who are members of the Southwoods residential neighborhood who have serious concerns about this project and ask your careful consideration of not only the application, but the requirements which apply to this application. As I mentioned in my response to one of your earlier questions, we, as a firm, have been involved in Chapter 40B projects in a number of communities. The largest of which was a 640 unit project in Woburn, which at the time was the largest Chapter 40B project in the state and some as small as 32 units in the town of Bolton, which were being placed in a single family residential

neighborhood. In each case and in every case that we've addressed, the major issue has been density, the number of units being placed on a particular site in a particular zone.

The conditions that the board may consider imposing relate to public health and safety, infrastructure requirements, traffic improvements. Also, I would suggest to you that impact upon the abutting property owners is a valid concern for the zoning board to consider. Just as you were to consider a special permit application for multifamily housing or a variance application of one sort or another, you're allowed to impose reasonable conditions. The right to impose those conditions is not suspended simply because this is a Chapter 40B. Rather, the conditions that you impose, whether it starts at density and works its way down to buffer improvements, cannot render the project uneconomic. That determination, I would suggest Mr. Chairman, is subject to your review with the assistance of a peer of view financial consultant and, I'm not sure if the board has, in fact, using the Mass Housing Partnership available funds, engaged a peer of view consultant to look at the financial pro-forma presented by the applicant as well as the peer of view analysis of traffic and infrastructure issues, not only by town departments, but also by outside consulting firms because this is a significant project. I understand that the town has considered this project as part of a LIP program. It's still Even the LIP correspondence, and I'll get to that in a moment, is subject to favorable decision by this board on the Comprehensive Permit.

Among the materials I have given you, Mr. Chairman, the first is a list of the 23 families for whom I'm providing representation on this matter along with my partner Elaine Lucas. Ms. Lucas recently completed service as 1 of 15 members of the statewide commission appointed by DHCD to review the Code of Mass Regulations as they relate to local procedures and state hearings before the housing appeals committee. So, the issues that I bring to your attention, I believe, are very basic issues, but they're core to not only the application, but also the decision making process.

The second document I've provided to you is a copy of the April 8, 2004 letter from DHCD which was issued as a determination of site eligibility and approval. You will note that that was originally based on a proposed 283 units. I direct your attention to the top paragraph of the second page. That paragraph, for the record, reads the proposed project will be required to comply with all state and local codes not specifically exempted by a Comprehensive Permit. In applying for a Comprehensive Permit, the project sponsor should identify all aspects of the proposal that will not comply with local requirements. Now, Mr. Chairman, I would suggest that each time you receive a request for zoning relief, whether it's for variance or special permit relief, the applicant is required to identify which provision of your Zoning Bylaw the applicant seeks relief from, whether it's special permit, site plan approval, variance or any other type of appeal whether it's an administrative appeal, those have to be specified. I suggest that DHCD expects nothing less of the applicant and presenting the application and nothing less from the board in rendering a decision. I will suggest to you that we take the position that that is a requirement, that the applicant go through and inventory all local bylaws, rules, regulations, zoning and general bylaws, whether they're board of health regulations, building department regulations, whether they're the regulations of the conservation commission or any other town department that falls under the so called local rule or regulation. The only 2 proceedings that we're aware of that follow courses outside of the

Comprehensive Permit are wetlands permits, under the state wetlands act, and Title V permits that are issued by the board of health. Everything else falls within this umbrella. I would suggest to you as well that the decision letter from DHCD indication initial project site eligibility also notes as a condition on the 2nd page, paragraph 1 submission to DHCD of the finalized details of the Comprehensive Permit, a marketing plan and the lottery to be held for the LIP units. So, the decision of this board is key to a successful application before DHCD and is in conformance with the requirements of Chapter 40B and the CMRs.

Now, the next document I provided to you is a list of requested exceptions to local regulations. Now, as I mentioned, Mr. Chairman, the burden should not be upon the building inspector, the health agent, the conservation agent, the planning director, any other town board committee or official to determine in what manner the application does not meet local rules, regulations or bylaws. As you'll note, Mr. Chairman, under the requested exceptions there's a description that tracks 2 and 3 and the northerly portion of tract 1 of Avalon's Shrewsbury site are within the Commercial Business District. The southerly portion of tract 1 is within the Rural A District as shown on the Town of Shrewsbury zoning map. Now, if you go to the 2nd page, Mr. Chairman, you'll see that the total lot area is represented as 1,209,000 sq. ft. However, there's no explanation between page 1 or page 2 as to what amount of square footage falls within the Rural A zone and what amount of square footage falls within the Commercial Business Zone. I'm sure that your building inspector would appreciate the fact that if I were presenting a plan tomorrow for allowed uses in each of those particular zones I would have a breakdown of what uses are going into the Rural A Zone, what uses are going into the CB Zone and what portion of relief do I need from each of those particular zoning districts. The reason that that's important, Mr. Chairman, is the use that's proposed by the applicant is not an allowed use under either the Commercial Business District or the Rural A District.

What you don't have in this application is a request for relief from the table of use requirements of your Zoning Bylaw. All you have is a request for relief or an indication of what relief is required from the dimensional table. I would suggest that's not enough because just as you would address any other zoning application and first determine 1, is the use allowed in the district and then 2, does the use meet all applicable dimensional requirements or are they seeking dimensional relief as to certain variance relief as to certain dimensional requirements. That's the kind of inventory that has to be developed before you can even consider what kind of relief to be granted. So, the question to be asked this evening, Mr. Chairman, is are they seeking relief from the Table of Use requirements or not because as the letter from DHCD said on page 2, the applicant should identify all aspects of the proposal that will not comply with local requirements. So, as a starting point, and interesting enough Mr. Chairman, I faced the same issue with a 640 unit project in Woburn where the applicant attempted to make a representation that its use would actually be compatible with what's called an R3 Multi-family zone. Well, the only problem with that was the property was located in a single family zone. So, an analogy to a multi unit table of dimensional regulations was completely off the mark. The starting point here has to be a comparison with the zoning in the district and then the use that's being proposed. The reason that's important, Mr. Chairman, is this board and none of your town officials can really develop an appreciation for the density or the

enormity of the relief of the relief that's being requested unless you know what the starting point is.

And then if I suggest to you, Mr. Chairman, if you look on page 2, the dimensional table, 40,000 sq. ft. are required for a lot for 1 home in a Rural A District. If you divide that 40,000 sq. ft. into 1,209,000 sq. ft. that would give you a starting point of an allowed usage of 30 homes. Now, this evening you have a revised proposal of 264 dwelling units on the parcel. And so, in order for you to figure as a starting point what is the appropriate density for the site you have to say what's allowed, what's being requested. But, the problem that you have, Mr. Chairman, with this application is the applicant hasn't given you that information as required. They have to identify the relief. If the current zoning, assuming for a moment Rural A applied to the entire parcel, if the current zoning only allowed 30 homes, then the relief they're asking for is not only the relief with respect to the use, multi-family dwellings in a Rural A Zone or a Commercial Business Zone and then the density. Have they given you any calculations as to what the density factor would be, because here what they're saying to you is the Rural A District requirement is 40,000 sq. ft. That's for 1 home. They're telling you that they've satisfied it by giving you 1,209,000 sq. ft. Well, I suggest, Mr. Chairman, that's not an effective analysis because they're putting 264 units on the property. So that when they say...

Mr. Salerno: Isn't it almost split right down the middle, Mr. Brackett?

Atty. Brackett: I'm sorry?

Mr. Salerno: Isn't it almost split right down the middle, the zone where the building is proposed?

Atty. Brackett: I'm not sure, Mr. Chairman. From the information that I reviewed, it wasn't clear to me as to what the line of demarcation was.

Mr. Salerno: I'm sorry, go ahead.

Atty. Brackett: I won't go through each and every category, Mr. Chairman. I think what you have is a table of dimensional regulations relating to Rural A district and Commercial Business district. I'll agree that the numbers that are in those first 2 columns do, in fact, represent the dimensional requirements for each of those particular categories. However, I don't think the board can fully appreciate the measure of relief being requested until you have the whole picture before you because by rough calculation, Mr. Chairman, there asking this board to consider increasing the density on the site by between 800 and 900 %. To go from 30 allowed to 264 is a substantial increase, Mr. Chairman. I suggest that before you can proceed any further with the application, the application has to be amended to address this. Now, I want to make it clear, I'm not waiting until you render a decision and then we're going to raise this issue on appeal. We think this is a matter because under those circumstances, the case would only be remanded back to you for further proceedings anyway. So, we want to bring that issue up to you up front so that you can factor that into your overall review.

Mr. Alarie: Atty. Brackett?

Atty. Brackett: Yes.

Mr. Alarie: If I may? Under Section VII of their application, there is a list of requested exceptions to local regulations. I see at the top of the page "Table I, Site Zoning Charge and List of Requested Exceptions." It says "multi-family apartment and townhouse use in Rural A and Commercial Business districts." They are asking for that exception, as I read this, and it is covered in this part of the application to the board. That identifies to me that they identified that multi-family use is not permitted in either of the those zones and that's a listing of one part of the relief they're requesting.

Atty. Brackett: Well, with all due respects sir, I would take the opposite view. If they have a table here where they've listed exceptions required, no, yes, no, yes.

Mr. Alarie: I think that table is separate from the very first item that they've listed there referencing Table I, which is different from Table II requirements that control the densities and other dimensional aspects.

Atty. Brackett: Well, that raises another question. Mr. Chairman, if I may, it's my understanding, having met with the building inspector this afternoon and reviewed the file, that the zoning board has not yet received a letter from the building inspector responding to the application. My experience in dealing with 40B applications is that the building inspector, as the enforcer and interpreter and the first line of the Zoning Bylaw, would be providing you with a written report in response to the application because the concern that I have, Mr. Chairman, if I could jump ahead for a moment, is sort of the catchall language which on page 3, in addition, the applicant requests...

Mr. Salerno: Are you talking about the Department of Housing?

Atty. Brackett: No. This is the list of exceptions letter, Mr. Chairman.

Mr. Salerno: Okay.

Atty. Brackett: For the record, that states in addition the applicant requests that all exceptions from and permits under the Shrewsbury Zoning Bylaw and all other applicable bylaws, regulations and local requirements be granted pursuant to this application so that the project can be built in accordance with the submitted plans. Well, what they're doing there is shifting the burden to the town and to this board to either investigate each and every other local rule, regulation or bylaw that applies to the project and then know that with all of those applying, you can then decide whether you're going to grant the exceptions that are requested. With all due respect to the building inspector, I don't think that this makes a request for exception from the Table of Use Regulations. This describes the project.

Ms. Murphy: Mr. Brackett, unfortunately, you weren't at the last meeting. We did raise that with the applicant at the last meeting, and that wasn't something that was acceptable for us to just blanket grant them.

Atty. Brackett: That last paragraph, yes. Thank you. So Mr. Chairman, I guess it gets back to the issue of whether or not the description multi-family apartment and townhouse use in Rural A and Commercial Business Districts is, in fact, a request for an exception inventoried along with all of the others on the chart or whether it's not.

The next question is, has the applicant conducted the necessary due diligence to be able to represent to you that they have combed each and every rule, regulation, bylaw both general and zoning in town so that they can tell you that this list is everything they need because I think the important thing is even if you deny the blanket considerations, Mr. Chairman, is there any other particular relief that you should be considering and should that be specified by the applicant. Through you, Mr. Chairman, to Ms. Murphy, I'm not sure if the applicant has already addressed that issue and said we've done that soup to nuts review and we're satisfied that this is everything the Town of Shrewsbury has by way of regulation that applies to the project.

Ms. Murphy: My memory, and counsel you can correct me if I was wrong, is that the applicant indicated that they have asked for everything that they're aware of and that that language, as in their opinion, was just boiler plate language to protect themselves. We did sort of indicate to them that that wasn't something that was really acceptable for us.

Atty. Brackett: Well, I'm sorry if I went over that issue again. My clients provided me with a video tape of your last meeting, Mr. Chairman, but I didn't have a chance to review it today. All I would ask you to consider, and I would like to address this further at your next meeting, if I may, depending upon the response of the applicant, would be the fact that even at the revised. The next letter in the file is the July 26th letter to Jane Wallace Gumbolt which proposes under the current plan 264 units as compared with the original 283. I would suggest, Mr. Chairman, that's an increase of 234 units over the allowed density on the site.

Mr. Salerno: You mean allowed density without any relief?

Atty. Brackett: Yes, if we were to treat the entire parcel using the 40,000 sq. ft. lot size requirement for each dwelling unit.

Atty. Schwartz: May I respond to that Mr. Chairman? With all due respect to Mr. Brackett, I just think that's flat out incorrect reading of the Zoning Bylaw. The Zoning Bylaw has a minimum lot size of 40,000 sq. ft. We comply with that minimum lot size. If this were a subdivision where we were a condo project, we were proposing to do individual units on individual lots, then that would apply. This is a single lot and there is not restriction in the Zoning Bylaw, as far as I'm aware, on multiple buildings on a single lot. I'm confident in saying that we need absolutely no relief under the Zoning Bylaw for density, per say, as a dimensional restriction. We do need relief from having multi-family use in the zoning districts in question. That was the intent of that language that Mr. Alarie pointed out is specifically to ask that as a use issue. But, as a density issue, as a dimensional issue, we feel confident in saying, and are happy to defer to the judgment of the building inspector as the zoning enforcement officer, that absolutely no relief is required. So, I think it's just a misreading of the bylaw.

Atty. Brackett: Well, Mr. Chairman, you may be allowed more than 1 building on a lot in a single family residential zone, but I would assume the other buildings would be your garage, plus a tool shed, plus possibly a pool house, all accessory buildings. You wouldn't be allowed to put 2 residences on a single family lot under your Zoning Bylaw.

Mr. Salerno: Drive around Shrewsbury.

Atty. Brackett: Well, some of those may be nonconforming uses, Mr. Chairman, but under your Table of Use Regulations on page 21, multi-family garden type, no, multi-family townhouse type, no, structures for dwelling units containing not more than 8 stories provided and then a quick note answered no. So, I would suggest that there are use regulations on this site. Mr. Schwartz and I may be differing on the most basic of issues regarding this application. They are seeking multi-family housing in a zone in which no such use is allowed. Were it not for Chapter 40B, the only way you could do it, Mr. Chairman, would be a use variance if the town grants use variances. I suggest that, without casting any aspersions on the applicant by not drawing attention to that particular issue, I don't think that they've given the board sufficient information to understand the multiplier affect here of the density they're proposing versus the density that's allowed. In their most recent statement, the July 16th statement from Mr. Roberts to David Murdock, he indicates that incorporating a 250 buffer would reduce the number of apartments from 264 to 192. Now, from their vantage point, Mr. Chairman, that would appear to be a substantial reduction. But, if you start at the other end of the spectrum, if they're allowed 30 as a matter of right and they would end up with 192, that's 162 units more than they're allowed at the present time. Then the only question is, if the board were to consider imposing a 250 ft. setback requirement for all of the buildings and the buffer issues, which we'll try to resolve to everyone's satisfaction in the next few weeks.

Can they make a go of it? The standard is whether or not the conditions, both as to density and the other aspects of the project...

Mr. Salerno: Mr. Brackett, I agree with the numbers as crunched. Again, you're talking about individual lots of 40,000 sq. ft. I think we're all aware that this is a multi-family project on this piece of land. What are our abilities, under 40B, to say "No, we're going to hold you to 40,000 sq. ft. per unit?" How do we, as a board, deal with 40B?

Atty. Brackett: Mr. Chairman, I'm not suggesting that. I think the problem with 40B is you look at what zoning allows today and there's no upper limit. Then the applicant comes in and says they want 284 or 283, they're willing to back off to 264.

Mr. Salerno: They want 300.

Atty. Brackett: They could come in and ask for 340 and end up at 264 and they would look like they're very generous. But, the only way you can address it, and Mr. Chairman if I can use the proceedings before the Woburn Board of Appeals on a 640 unit project on a 75 acre parcel of land, the starting point was what did the single family zoning in the district allow. It allowed 112 single family homes and there was a 640 unit proposal. Eventually, it proved at 300 units and eventually modified by HAC at 420 units. So, the final approval by HAC, currently under appeal, was at 2/3 of the requested number. I

apologize if you've already considered this in your open meetings; the board certainly has the authority to determine density on the site and to impose reasonable conditions on density as long as the board can be assured that those conditions will not render the project uneconomic. This is where the extra time, which I would suggest if the board has not engaged its own financial consultant, necessary for your peer review consultant to review the financial pro-forma would assist you in determining whether you're just faced with the proposal as presented at that density or whether you can offer a compromise decision at some other point. I'm not suggesting, Mr. Chairman, you're held to the 40,000 sq. ft. Forty B allows this board to exercise its wisdom in granting permits. But, Mr. Chairman, this is not a piece of property that's abutting either a Zoning District 6, 6A or 7, all of which are multi-family zones. Because of that, I think you have to give consideration to the abutting zones.

Mr. Gordon: Mr. Chairman, Mr. Brackett's given us an awful lot of information awfully quickly. I don't want to dip into the neighbor's pockets, but would a brief be in order so that I can look at what you're saying as opposed to just hearing what you're saying?

Atty. Brackett: Yes. I would be happy to send that to you, to the entire board through your secretary.

Mr. Gordon: Then we could look at the issues you've brought up and in the time that is available to us.

Ms. Murphy: I just want to be sure I understand the argument in terms of the density. What you're really saying is that the 40,000 sq. ft. requirement is a per building requirement for single family use? You're using that as a multiplier?

Atty. Brackett: Yes.

Atty. Schwartz: Which is wrong.

Ms. Murphy: Okay. Counsel, your argument is that, at least with respect to the districts that we're dealing with, there is no per dwelling unit requirement in there?

Atty. Schwartz: Right.

Ms. Murphy: So, Mr. Brackett, what you're suggesting is that you impose a per dwelling unit, but the zoning seems to me doesn't contemplate multiple family units in those districts and so it doesn't address it?

Atty. Brackett: I don't think Mr. Schwartz and I are really on the same wave length here. If you look at the table of uses Rural A residential uses, 1-family detached dwellings.

Ms. Murphy: That's the only allowed use.

Atty. Brackett: Right. It's the only allowed use in the zone.

Ms. Murphy: Okay.

Atty. Brackett: Now, the next question is how much land do I need to build a single family home in that district.

Ms. Murphy: Right.

Atty. Brackett: You need 40,000 sq. ft.

Ms. Murphy: But, they're not building one.

Atty. Brackett: Oh, I understand that.

Mr. Salerno: But, there's a maximum lot coverage that plays into place too.

Ms. Murphy: That's the only thing that I think is what you would look at is the maximum lot coverage.

Atty. Brackett: Right, but I think you need a point of reference, Mr. Chairman. What I'm suggesting is, and this is not the first time I've made this argument and in many occasions I've made it sitting as counsel to the zoning board in one of the 11 communities that we represent, that if you need to be able to get a handle of what's being asked of you, you first have to determine what the existing zoning allows, what's being requested and then as you consider the impacts upon abutting neighborhoods, abutting residents who live in a Rural A zone, all of whom have 40,000 sq. ft. lots. You can then appreciate the impact of the density this project would have on that abutting use.

Mr. Salerno: I think we do. I don't think there's any question that we don't.

Atty. Brackett: Right, but...

Ms. Murphy: I'm trying to see where the zoning ordinance requires them to ask for relief though. I just don't see that. That's what I'm looking for.

Mr. Alarie: Mr. Chairman, excuse me. In that line of reasoning you've got to look at that Commercial Business district. You're quoting a 40,000 sq. ft. lot size. In that district, no residential use is permitted whatsoever. How can you then assign a per unit density to that area that does not permit any type of residential use? I think it's flawed in looking at it that way.

Mr. Salerno: It's almost half of this, wouldn't it be?

Mr. Alarie: The site perhaps is almost equally zoned. I just think it's crystal clear to everyone involved who went through the LIP process that the predominate issue here is the use of this property for a multi-family use and then, on top of that, what other dimensional requirements they might not be in compliance with. I don't know how you can assign a single family requirement to this proposal.

Atty. Brackett: I'm not doing this Mr. Chairman. If it's not clear, I'm asking you, as I mentioned earlier, if you considered bookends here, what are the bookends that you're being asked to consider? I think I stated earlier, I'm using the Rural A zoning requirement for dimensions by analogy to apply to the abutting Commercial Business district. At 40,000 sq. ft. per dwelling unit, that would allow for a density of 30 units. The other part of the bookend here is a request for 264 units. I want to make it clear; I'm not trying to apply the 40,000 sq. ft. requirement to each unit as proposed. I'm asking you to consider that this is not a zoning district in which the first unit requires 5,000 sq. ft. for multi-family and each additional unit requires 2,500 sq. ft. That would be a different calculation because then you could say the land is located in a district which will support 140 units allowed under zoning, they're asking for 264; is that a quantum leap under a 40B if they give me 25 % affordable housing units? I think it's relative in terms of impact, buffering, and the percentage of relief because I still come back to my starting point Mr. Chairman. I don't think you take alteration of your Table of Use Regulations for granted, whether you do it by title sentence at the top. The list of requested exceptions, it doesn't say sentences of requested exceptions; it says list. That portion of the application says list of requested exceptions. So, I don't interpret the description of the use in the zone to be the equivalent of a request for exception. Because this project is so important to the neighborhood and to the town, I don't think we can overlook issues of this importance because in the final analysis, Mr. Chairman, if this board says yes we believe that this application is appropriate, but we have concerns regarding density. We want to approve it at 200 units rather than 264. Well, 200 units would then be 170 units more than currently allowed. You look at the surrounding areas and then the question is 200 units and the cost of the development, land acquisition, hard construction, soft construction costs, all the other associated costs, whether or not they can make a reasonable rate of return at that density. So, it's not 264 or nothing. You have the flexibility to make a decision at some number in advance. I apologize if I've been repetitive in some of this, but I want to make sure I'm not giving you the wrong message about what I'm trying to do with the numbers here.

Mr. Roberts: If I could just interject for one second. I would agree that we would prefer to also see something in a brief form to respond. But, I do think you have to take a look at the whole site here. There's a commercial district as well, which is a significant portion.

Mr. Salinas: It seems to me to be almost half.

Mr. Roberts: So, when you're comparing the number of housing, it's "x" amount above the rural district plus the ability to build a 6 story 50 ft. high commercial building in the front of the site, which is also a concession as it relates to the existing zoning. So, I think you need to take a look at the whole picture. When you talk about traffic, that would be an interesting traffic study by right, what that commercial zone would produce.

Mr. Salerno: Okay. Well, I anticipate we're going to receive more documentation.

Mr. Gordon: When do you think Mr. Brackett will get it to us, before our meeting? In fact, when are we meeting?

Mr. Salerno: Well, it looks like August 24th seems to be the date by which everybody can be here or we have to go into the second week of September.

Mr. Gordon: Mr. Mahowald can't be here on the 24th.

Mr. Salerno: Right. That's the one date with the least amount of people that can't be here and Robert's sitting as an alternate. So, we have to look at the second week in September. I don't know if we're now on the outer fringes of where we want to be schedule-wise, is that a realistic time to resolve the matters with the abutters relative to the individual landscape agreements, provide us with the lighting plan, the 21E plan and Mr. Brackett's response in addition to negotiating with you on the remainder of those agreements? Is a month a realistic date?

Atty. Schwartz: Mr. Chairman, I'm not going to be here on August 24th. I'm going to be on vacation, so it's probably pretty important that at the next meeting I be here.

Mr. Salerno: Mr. Alarie, do you know about room availability then after the first week of September?

Mr. Alarie: If you can give me a couple of minutes.

Mr. Salerno: Is the 14th all right with everyone?

Ms. Murphy: Yes.

Mr. George: Yes.

Mr. Rosen: Yes.

Mr. Gordon: Yes.

Mr. Salerno: Okay, if the room's available. You know, we can even do this in the other room. There's enough room. Is the 14th of September available, Mr. Alarie? That seems to work for everybody.

Mr. Roberts: If my counsel is going to delay the schedule by 3 weeks, I don't mean to be complicated, but I would almost prefer, without Steven, to have it on the 24th.

Mr. Salerno: Okay. Well, I mean, realistically, are you going to be able to have everything in line for the 24th? My concern is you've got 8 abutters to work out individual agreements with plus the other matters. Realistically, that's working out 2 agreements a week. If you guys can do that, that's fantastic, but is that enough time?

Atty. Brackett: Mr. Chairman, not attempting to delay the matter, I would request it in September if the room's available. That just gives us some extra room. Mr. Schwartz will be here. I know some of my group may be on vacation over the next 4 weeks or so. I know I have 2 weeks planned as well.

Mr. Alarie: September 14th, no. I believe that's an election day.

Mr. Salerno: What about the 16th, the Thursday?

Mr. Alarie: The 15th is available.

Atty. Schwartz: I can't do it on the 16th, so you might as well do it on the 24th.

Mr. Salerno: Okay. It looks like August 24th. That's what I'm saying, realistically, a month to get it done. August 24th at 7:00 P.M. in this room. That's the motion to continue it, that Mr. George just made?

Mr. George: Yes.

Mr. Rosen: Second

Ms. Murphy: Second.

Atty. Brackett: Mr. Chairman, I'll plan on getting my memo to the board's secretary a week in advance of that.

Mr. Salerno: The town manager would like to speak.

Mr. Morgado: Ms. Barrett has a couple of things she would like to address this evening.

Mr. Salerno: Oh. I'm sorry. You know what, Mr. Brackett's so big I couldn't see you behind him

Ms. Barrett: That's perfectly okay.

Mr. Salerno: He didn't block like that, by the way, when he played for Holy Cross.

Ms. Barrett: I'm on my best behavior and not putting my hand up constantly. I truly will be brief.

Ms. Barrett passed out information packets to the board members.

I know you want to get out of here, so do I. It's a long trip for me to get home. I think I could probably do this tonight so that we don't have to be dealing with any other issues. I don't want to put you in a position where you're trying to hear new information at the next meeting, so I'll tell you why I'm here and what this memo's about.

First of all, I'm going to say who I am and why I'm here. I think some of you may know, obviously, many do not. I'm a planning consultant. I've been with your town since 2001. John Connory and I started here at the end of the master plan process doing a physical impact analysis of some of the land use proposals that were in that plan. We stayed on to help with some initial implementation of your master plan. John and I have worked with your community for a couple of years on various zoning issues, most

recently was the Lakeway proposal at town meeting. We also worked with your town on the disposition of the Allen property, which, as I think many people in the room might know, was going to be an AvalonBay development, if I'm not mistaken. Dan Morgado asked me to be available during this proceeding as an assistant to him and to you and to the selectmen. I've been in this business for about 20 years. Chapter 40B happens to be an area of my expertise. I'm not an attorney. I'm a planner and a public policy analyst.

I want to talk to you a little bit, just sort of put in context why this application is in front of you and what some of the issues are from a town wide perspective that need to be considered along with the interest of the abutters. I was asked, last fall, to sit in on some meetings with Dan and some of the department heads with AvalonBay when AvalonBay came forth and said we want to do a Comprehensive Permit in your community. You know that because we've got an interest in the Allen property. We found another piece, but we would like to do this in a little bit different way.

The option that was available at the time was for AvalonBay to do what every other rental developer I know does and that was to go to Mass Housing and seek a letter of site approval and then start dealing with the town. This process was a little different. I have to tell you, I've never seen a Comprehensive Permit prep process that worked quite the way it did here. I often tell Dan and he probably gets tired of hearing it, your town is special. It truly is. This was a classic example of it. Essentially, what happened was the developer met with the staff and then met with the selectmen. What you ended up with was a local initiative program application in which the town already had a lot of input, not from a neighborhood perspective, but from the perspective of the selectmen who after all oversee the health, safety and welfare interests of the entire community.

One of the issues that we had to deal with in this was, gee, your town even though it has a lot of multi-family housing is really low on Chapter 40B housing and what risks does that create for you as a town as 40B interest continues to migrate in this area and find properties. It might make sense if the town actually were a party to trying to plan the project. A very novel idea, I realize, but instead of just fighting it from the outset, the town, through the selectmen and the staff, reached some basic agreements about this project, how it would be designed and what sort of assistance AvalonBay would be willing to provide the town. The understanding at the time was that well, at the very least, a project of this scale, density bothers some people, but from a housing view it actually can be to your advantage because if your development is at a certain size, you will at least get a reprieve for 1 year from another Comprehensive Permit coming in the door. At that time we didn't have a housing plan in place, but we did have the protection of regulations that said development of this size, if it's approved, for something in this window protects the town from having to consider other Comprehensive Permits for at least a year. We agreed at the time that the town would go ahead and prepare a housing plan and submit in hopes of turning this development into a longer term of benefit. But, at the time that didn't exist. That does exist as of today. Dan learned from the Department of Housing and Community Development that the town's housing plan has been or will be approved, which is good news.

Mr. Salerno: Excuse me. Why do you say a year we'd be protected as opposed to 2 years?

Ms. Barrett: Because as of September 1, 2001 some new regulations went into affect under Chapter 40B. Some other regulations went into affect in October and December of 2002 that sort of create some protections for communities in an attempt to address concerns that local officials had when they dealt with development projects.

First of all, you should know that after September 1, 2001 a developer could not come into a town and apply for 640 units. The cap today in your town is 300.

Mr. Salerno: Did you say in this memo 2 years?

Ms. Barrett: Two years because you now have an approved housing plan. But, we didn't have that in the fall. What we had was an agreement to seek one. So, it was in the town's interest to be thinking about well, if we're going to do this, how do we get something that's at least large enough that it's going to protect us. The reality is that is because of the size of this development, roughly what it is today, with an approved housing plan you now get a 2 year benefit, a protection from other large or small Comprehensive Permits. It's something to consider.

I guess that was part of the sort of what are the interests of the town at stake here, separate from the considerations of the neighborhood, which, of course, are very important. But, how does the Town of Shrewsbury and any other town in Massachusetts protect itself from a large unwanted Comprehensive Permit? My gosh, maybe something counterintuitive makes sense. Why don't we work with the developer we think we can work with? Maybe that's the way to do it? That truly is what happened here.

The second issue that we started to talk about last fall and certainly affected the conversations between the staff and the developer and is an issue today, certainly after some comments that were made at the first hearing was what's this going to do to us fiscally? I know tonight most of the comments have been about traffic. If I lived in the neighborhood that would probably be my big concern too. But, someone at the last meeting mentioned, gee, there were an awful lot of police calls made to Avalon Arbor. I just think the fiscal implications of this project for the town will be a lot more significant than perhaps they've considered. Someone questioned AvalonBay's estimate of school aged children being about 56 kids. So, Dan thought that perhaps we should take a look at that. I want to just tell you where I landed with it. I did not attach to this all of the tables that back up what I have to say. You're certainly welcome to them. But, essentially, I would say this to you, as one who has a database of 19,000 apartments in Massachusetts and is probably one of a handful of people who really deals with fiscal impact day in and day out basis in my career, I think the development will probably cost you a little more than it's going to generate in revenue. If John Connory were here he'd say it's neutral. It's basically dollar in, dollar out. I think he's probably right. If I'm going to be precise, I'd say I think it's going to be a little bit negative. Not because I think it's going to generate a lot of children, more than what AvalonBay has represented, but there are a couple of other considerations, not the least of which is your assessments in this town tend to be kind of low. When I started looking at this project, I was sort of in a positive position. As for fiscal impact, I looked at the number of kids. We did a study. We looked at this development against 3 other multi-family developments in your town and

tried to get a handle on what kind of revenue are they generating, what kinds of cost are the generating, what's the incident response from police and fire. We found, sure enough, a significantly higher number of calls placed to Avalon Arbor than to the other developments. So I said Okay, I'm going to take the per capita cost of public safety and I'm going to double it and I did. Just assume it's double in this development. We looked at the number of kids in all of your multi-family housing. The number of kids at Avalon Arbor is a little bit higher than most of the other multi-family developments. There's a good reason for that. It has 4-bedroom units and it has a considerable number of 3-bedroom units. One of the agreements that AvalonBay made during the deliberations last fall with the town was that they would reduce the number of 3-bedroom units in this development in deference to the town's concern about potential kids. So, you have a development in front of you now where about 8 % of the units are 3-bedroom. That is substantially different from the situation in Avalon Arbor. So, I couldn't possibly say this development is going to generate the number of kids that are living in AvalonBay's project tonight. Therefore, I looked at what your average number of kids per family is in this town, which, believe it or not, is slightly below the state average. I looked at the percentage of families in your town with school aged kids that live in rental housing and I derived a multiplier. Essentially, I took the state average for children in rental housing and I increased it by 50 %. So, it's sort of close to where Avalon Arbor is today, but not quite. Essentially, what I came up with is you know, if you consider your property taxes, if you consider the interest of the town on the cash flow from the enterprise funds to which this project will pay fees, you consider local receipts, you look at all of the revenue that this project is apt to generate it's probably going to cost you about a dollar or two for every dollar it generates in revenue to the town. Some people will say it horrible, it's fiscally negative. Your single family homes are anywhere between \$1.47 and \$1.52.

I would like you to sort of consider this as you go forward with the review of this project, that there are certainly issues about it that may seem more injurious to the town. It dose not comply with your current zoning policy. It's absolutely true. It's a use that's not allowed in this district. It probably creates some discomfort for the neighborhood. But, it's a use that will not further contribute to the fiscal imbalance that is created in this town by the increase of single family home development. It is an opportunity for Shrewsbury to create a buffer for itself from other comprehensive permits for at least 2 years, developments that, I might add, in my experience will probably not be as well designed as this one. So, my recommendation to the selectmen last fall and my recommendation to you now is that, barring issues that need to be worked out with the neighborhood, that sense of separation between the two communities, I think you should give the project favorable consideration. I would not be concerned about adverse school or fiscal impacts on the community. That was basically recommendation.

If you have any questions I would be happy to address them. I also want to point out that I did look at the pro-forma on this project last fall when it came in because I questioned the rents. Michael may remember that I called them up and said that I think your LIP rents are wrong. I did look at this project. I can tell you from my experience as a housing consultant, you cannot compare a single family home for home ownership purposes to rental housing. It is completely different. So, to start from how many single family units can you get on lots of, actually Ron, I think it's 20,000 sq. ft. not 40,000?

Mr. Alarie: For a single family home, that's correct.

Ms. Barrett: For a single family house it's actually a minimum lot size of 20,000 sq. ft. So, if everybody could bear that in mind when you're trying to figure out how many units they could get on a portion of this site that's Rural A. It really doesn't work to start there because the very nature of the use is completely different. If you have any questions about pro-forma review I would be happy to answer them.

Mr. Salerno: Thank you. August 24th was the motion that was made and allowed.

Ms. Murphy: I would like to make a motion to continue until August 24th.

Mr. Salerno: Yes. So, the motion to continue this matter for the presentation of the items requested was allowed to Tuesday, August 24, 2004 in this room at 7:00 P.M. Mr. Gordon, did you just move to adjourn this meeting?

Mr. Gordon: I move to adjourn

Mr. Salerno: Second that. Folks, again, thank you for very much for being so civil in this matter. And the developer, the same thing.

Mr. Gordon: They will receive notice?

Mr. Salerno: Yes. Again, folks, there will be a notice mailed to the abutters.

AUGUST 24, 2004 ADJOURNED SESSION

PUBLIC HEARING: AvalonBay Communities, Inc., 890 Hartford Tpke., Shrewsbury, MA.

PRESENT: Anthony M. Salerno, Chairman, Paul M. George, Melvin P. Gordon, Bridget M. Murphy, Ronald I. Rosen and Ronald S. Alarie, Building Inspector.

Mr. Salerno: Tonight's meeting is a continuation of a comprehensive permit plan from AvalonBay Communities submitted and a continuation of a prior hearing. As we do at all hearings, we ask at the beginning and explain our rules, they're informal rules, but we ask you to adhere to them so that we can have an orderly meeting and give everybody's opinion the appropriate weight. They simple rules are those of courtesy. We ask you to follow these rules. We ask the petitioners to identify themselves, make their presentation. Everything is being recorded so that we can have accurate minutes of this meeting. After they make their presentation or at some time during the presentation the board may have questions for the petitioners. At the conclusion of that we'll then turn to you the residents or interested parties that are here and ask you to make your comments or inquiries. We ask you to make them to the board. You'll be recognized then we'll try to illicit the appropriate responses for you. We like to give everybody an opportunity so that no one person monopolizes that. Again, we just ask you to be courteous of each other. This is town government by the people. We may have a difference of opinion, but

we want to give everybody the opportunity to speak, so we just ask you to listen respectfully, make your statements and we'll have an orderly meeting and, hopefully, a full exchange of ideas.

So, with those minor rules in place, we're going to ask the representatives of AvalonBay to identify themselves again for the record and continue with their presentation which was suspended from the last meeting.

Mr. Roberts: Thank you, Mr. Chairman. For the record, I'm Michael Roberts with AvalonBay Communities. I have with me this evening Steven Schwartz, counsel from Goulston & Storrs. I wanted to make my formal comments brief this evening. I just wanted to outline some of the follow-up items that had been requested with the conclusion of our last meeting.

First, as we had discussed from an environmental review, this does have a complicated history to it. What we have done since the last meeting is we have had a formal meeting. We brought in our environmental consultants who did the testing and the reports for us. We met with the various town members, including the board of health. I believe we were able to successfully answer the questions concerning the site. In addition, you should have received sort of a written summary of some of those details. Also, this evening I do have Nick Lanni, our environmental consultant. He's available this evening if there are any other follow-up questions.

In addition, we had, with our comprehensive permit, submitted a list of requested exceptions to the local regulations. There had been a request for us to go back and work with the town to clarify and specify some of the exceptions that we would be seeking as part of this proposed development. We have done so meeting with the building inspector and the engineering department. We have put together a more comprehensive sort of formal line by line item summary of the exceptions that we will be looking for. A copy of that information has been provided as well.

We have also submitted a revised landscaping plan which shows a little bit more detail, including a photometric plan. I have received correspondence indicating that there still are some questions about our photometric plan. I think, specifically, there still are some zeros that show up. Primarily, what we have done is in our photometric plan, I think we've successfully shown the lighting plan through the streets and the parking areas being adequately lit, but not over lit, which is obviously a concern. Where it gets a little bit less lit is specifically in area such as this, basically, the backyards of buildings. What we do have is in each entrance, we do have 2 lights that are on either side of the door, sort of a standard front door lighting situation. They don't really register on a photometric plan. It does light the entryway, but doesn't really spread out to the backyards. I think the important part, from our perspective, is those front doors that are abutting parking areas where people at night will be parking and entering the buildings. In those situations there is adequate lighting, from our perspective, on the photometric plan.

Having said that, we are more than willing to continue to work with the town to make sure that you're comfortable that we have an adequate plan. As I said before, the biggest

issue is to find that balance. We don't want it to be a Wal-Mart, but we want it to be adequately lit and certainly safe. So, we have provided the updated photometric plan, but again, we're more than willing to make sure you're happy with the lighting.

Finally, we do have one change to our site plan, which is the bus stop. We had talked about having it out on Route 20. At our last meeting it was indicated that for various reasons it would be better served within the site. We have located the bus stop right there on the revised site plan. Also, our engineers have worked so that the circulation is adequate for a bus to get in and out. So, they can actually come here, there's an enclosed bus shelter for the students to enter the bus and then they can leave the site at the entrance.

Finally, we have continued our discussions with the neighborhood abutting us in the rear of the site. I've had the opportunity to meet with all of the neighbors who are directly abutting our site toward the rear of the site. I would like to acknowledge that I very much appreciate every single one of them allowing me the opportunity to spend some of their time in their backyards to discuss our proposed landscape buffer plan. We've had very open and cordial conversations, so I very much appreciate that. As it relates to the landscape plan, we are continuing our discussions on creating, in addition to this plan, a landscape buffer that would consist of various berms and plantings that will help further sort of screen our development. I think based on my meetings, in each and every instance there are things we can do that we talked about that will be an improvement to what we had originally submitted. We continue to be willing to work through that to make sure that the landscape buffer is one that serves its purpose and is attractive and suits the needs of the residents.

We did also have a meeting last Wednesday with the residents' counsel and one of the residents at which point we did discuss the progress that we had made. But, in addition, it was conveyed to us that there also continues to be issues on density and not necessarily absolutely cutting the density, but seeing what we could do to move some of these buildings onto this part of the site and do something with this building to increase buffers. At this point in time, we do not believe there's really a way that we can effectively transfer units to that portion of the site. We feel comfortable that the plan that we have with the buffers between 100 and over 200 ft. with existing landscaping and reduced elevations is one that's an acceptable site plan.

So, having said that, that really summarizes, from our understanding, what the follow-up items were from our last meeting. We would be happy to answer any questions.

Mr. Salerno: Do any board members wish to inquire?

Mr. George: I have a question. You said the bus will enter through the front entrance. Where is it going to be able to turn?

Mr. Roberts: The bus would enter in the front entrance. The turning radius would be such that it would turn in here to this area. The bus stop would be here and then the bus would turn and make the right-hand turn and turn out.

Mr. George: Is that a wide enough turning radius for a school bus?

Mr. Roberts: Yes. I got a submission from our engineers. He had actually taken a school bus and done the actual turning radii to make sure that it does work. We will certainly provide that to you if not tonight, I could follow up tomorrow.

Mr. George: Thank you.

Mr. Gordon: Following that up a little bit, Mr. Roberts, the children get on the bus and off the bus on the passenger side. What you're proposing is the bus facing out, which would mean that the bus stop is on the driver's side. Is there any way to have it come in and come in that first entrance so that the kids are on the passenger side and then come out where they were going to come in?

Mr. Roberts: I believe that is certainly something we can engineer. That is a good point. We would be willing to take a look at that. Certainly, from our perspective, that could be a condition, that we adequately provide a bus stop that everyone is satisfied with.

Mr. Gordon: I have a couple of other question.

Mr. Salerno: Go ahead, Mr. Gordon, you might as well go through your punch list.

Mr. Gordon: I noticed on the environmental study here, and I was at the meeting with you, if you remember, and I do have two small questions, one of which is important. The board of health, you had agreed, would monitor the demolition of the Rawlings building so that it can be seen that there was no residue under the dry section of the building, which is where it might congeal. Is that still acceptable to you and to be put into the decision?

Atty. Schwartz: Yes.

Mr. Roberts: That is acceptable.

Mr. Gordon: Okay. And the irrigation well will never be used for drinking water?

Mr. Roberts: That is correct.

Mr. Gordon: Okay. I understand that you talked with the engineering department concerning the issues on your revised list of waivers and have agreed to remove most of the minor items, such as you've agreed on utilities and how they're going to be done? We don't know what the landscape strip is going to be because you haven't done it?

Mr. Roberts: Correct.

Mr. Gordon: I had a question about the dumpster. You have one dumpster area over, I think, near the commercial area?

Mr. Roberts: Correct.

Mr. Gordon: How does trash get collected and arrive over there?

Mr. Roberts: We have one dumpster recycle center in this area of the site. Aside from the quality of our residents homes, we survey them all the time, the top two issues are parking and trash. So, what we have found is to have a central location is best as opposed to having several smaller locations throughout. This is actually an enclosed structure that actually has a compactor in it and a recycle center. So, residents, on their way into the community and out of the community, can stop and put their trash in the compactor and also their recycling materials. Then we contract out and have that removed and replaced as needed. I think it happens just about every day, if not every other day.

Mr. Gordon: What about paragraph G of the Subdivision Rules and Regulations concerning the requirement that all utilities be placed underground to allow temporary above ground services during initial construction? Has that been reviewed and approved by engineering?

Atty. Schwartz: Yes. We've gone over the whole list with the engineering department and the building inspector.

Mr. Gordon: How about the fire chief, you're asking for a waiver of where the fire hydrants are?

Atty. Schwartz: I can't speak to internally what the circulation was. I don't know. We did not send it to the fire chief.

Mr. Perreault: He gets it. He gets a copy.

Mr. Salerno: Would you just identify yourself for the record.

Mr. Perreault: Jack Perreault, town engineer.

Mr. Salerno: Thank you sir.

Mr. Alarie: The fire chief was provided a copy of both the application and the building plans and the site plan initially.

Mr. Gordon: Did he comment?

Mr. Alarie: I believe there was a comment letter in the original file for the original meeting. I don't recall anything relative to the hydrants.

Atty. Schwartz: Just to be clear about what we're talking about here, the reason that this came up initially is because one reading of the Zoning Bylaw would incorporate by reference some provisions of the subdivision rules even though this is not a subdivision. So, one of the things we try to do in being comprehensive is to go through the subdivision rules very carefully and to call out all the technical issues that we wanted to

raise as exceptions. We want to be very clear to members of the board that we have not changed in any way the location of the fire hydrants and it is not a zoning issue. It's just because the subdivision regulations were incorporated by reference. So, this plan is the same with respect to fire hydrants as it was. I assume the fire chief did have opportunity to review that and is comfortable with it.

Mr. Gordon: You insure these buildings, correct?

Mr. Roberts: Yes.

Mr. Gordon: I'm sure that your insurance company will also have something to say about the location of hydrants and that.

Going to the landscape plan, I noticed you've raised the fence from 4 ft. to 6 ft.?

Mr. Roberts: That is correct. In speaking with some of our neighbors, there was a concern about the proposed fence being 4 ft. so we have increased that to 6 ft.

Mr. Gordon: That's acceptable?

Mr. Roberts: That's acceptable.

Mr. George: That fence is going to be located in front of all the berming?

Mr. Roberts: Between the berming and our community.

Mr. George: Right.

Mr. Roberts: Right.

Mr. George: On the height of the berming, how tall will it be?

Mr. Roberts: The effect of the berming is to, between the berming and the landscaping, to provide an 8 to 10 ft. buffer. In reviewing each individual backyard there were areas where we felt it would be difficult to berm so we're proposing less or no berm and taller trees. In other areas where we actually would need to bring in fill so that we can provide the landscaping without encroaching on neighbor's backyards there will actually be fill and berm. But, the net effect is to provide sort of an 8 to 10 ft. landscape buffer.

Mr. George: Are we going to be able to see the plans of that landscaping?

Mr. Roberts: We'd be happy to provide you copies as they progress.

Atty. Schwartz: It was our understanding from the last session of the public hearing that the consensus of the board was that, other than the site plan, the issue of landscaping for the benefit of the individual neighbors was one for us to work out with the individual neighbors, which we have been working on, but that it was not going to be imposed by

the board as a condition or incorporated into the decision. We've been operating under that assumption.

Mr. Salerno: So, what happens if you don't work it out with each individual neighbor if it's not part of the plan, counsel?

Atty. Schwartz: We're hoping that we will work it out with the neighbors. If we don't, then we obviously don't have an agreement with them.

Mr. Salerno: All right. Where does that leave everybody?

Mr. Roberts: I think from our perspective, Mr. Chairman, we had hoped that we could have arrived this evening with a formal agreement with the neighbors that involved both the landscaping buffer and an agreement on the site plan. We just aren't there.

Mr. Salerno: What's the hang-up?

Mr. Roberts: The site plan, the building location and the number of buildings. The last conversation that we had had with the attorney, Mr. Brackett, was that these town homes needed to somehow move to this part of the site and that this building needed to be pushed back or be reduced in size.

Mr. Salerno: I think it was our dream the last time that we were here that, realistically, there could be a meeting of the minds between each individual abutter and the developer. That's what we were hoping would be accomplished before this evening because that leaves a significant void. It's so ambiguous when we talk about an 8 to 10 ft. buffer for these residents if we don't know if dirt's going to be 6 ft. and the trees are going to be 2 ft. or are the trees going to be 8 ft. and the dirt's going to be 2 ft.

Atty. Schwartz: To be very direct about it, we don't have a deal with the neighbors.

Mr. Salerno: Right.

Atty. Schwartz: They're looking for very significant concessions which we do not feel are warranted.

Mr. Salerno: Okay.

Atty. Schwartz: I don't think it's a function, in all honesty, of whether it's been 3 or 4 weeks since the last hearing or whether it would have been another week or two or however long. I think it's a function of there is not a meeting of the minds, at least based on the last meeting we had with their counsel and one of the abutters.

Mr. Salerno: It doesn't sound, in the tone anyways, that you're optimistic that those differences are going to be resolved.

Atty. Schwartz: I'm always optimistic.

Mr. Salerno: Okay, I don't want to put words in your mouth.

Mr. Roberts: It is my anticipation and commitment, regardless of what happens this evening, I will continue with the neighbors in an effort to finalize this landscape buffer and complete the work.

Mr. Salerno: We're cognizant of the fact that there has to be a meeting of the minds too and we're not shifting any kind of burden to you.

Mr. Gordon, refresh my memory, from the list of things we had at the last meeting and other board members, wasn't there an initial concern or some numbers mentioned about the commercial piece of the property and how long the option was going to be held on that?

Mr. Gordon: Fifteen years. They agreed to 15 years. They had proposed 10.

Mr. Salerno: And there's no change in that?

Mr. Roberts: Correct.

Mr. Gordon: Mr. Chairman?

Mr. Salerno: Yes.

Mr. Gordon: Looking at the proposal from June 15, 2004, which has a proposed berming which I didn't like us getting involved in because it was all on private land, it appears to me that as a minimum that could be moved back to the Avalon land and committed to as a minimum. That might encourage some forward movement on individual plans. I was concerned that, in spite of what we've been told, we get involved in private litigations if the berm was on private land.

Mr. Salerno: I don't think we have any jurisdiction over it if it's going to be a condition that's imposed upon the land of the private homeowner.

Mr. Gordon: Their attorney, Mr. Brackett, can speak for himself, is telling us that we never have to worry about that because towns are protected from that type of litigation.

Atty. Schwartz: Mr. Chairman. I think, just to clarify a point. You're talking about 2 slightly different things. I think that Mr. Brackett has made representations that you don't have to worry about liability in imposing conditions. Not to put words in your mouth Mr. Chairman, I think that you were getting at is that you could not impose a condition that would require us to do work on somebody else's property.

Mr. Salerno: Well, I mean, we can't do that without the consent of the property owner. It's a two party action. You know that counsel. How are we going to propose that as a condition?

Atty. Schwartz: I agree with you.

Mr. Salerno: That's why I'm reluctant to do anything like that.

Mr. Gordon: I agree.

Mr. Salerno: It's the first time for you and me.

Mr. Gordon: Yes, it is.

Mr. Salerno: Well, we're making progress.

Mr. Rosen: I'm somewhat concerned about the buffer. How close are you, obviously not very, but how close are negotiations or how far apart are you with individual residents? Are you close with any of them?

Mr. Roberts: Again, in meeting with the individual residents as it relates to the landscaping buffer, I think there was some very productive input, all of the things that I think we can do and can satisfy the buffer issues. Regarding density and location of buildings, I think we're pretty far apart.

Mr. Salerno: Perhaps we can depart from that. Are there any questions at this time or do you want to open it up and see if there are any other questions stimulated from the people in attendance and then go back to the board or are there any board members who need a little more time?

Mr. George: I have questions.

Mr. Salerno: Go ahead.

Mr. George: In the proposed replication area, is that going to be locked access, like fencing or is it just going to be open?

Mr. Roberts: I believe it's intended to be open.

Mr. Liston: Can I make a comment?

Mr. Salerno: Sure.

Mr. Liston: Andrew Liston, Thompson and Liston Associates. The replication area is a compensating area for wetland fill at the crossing. So, it tends to be an area where it's cleaned out down to roughly a level within a foot of ground water then seeded either naturally or by planting with wetland species. So, it is generally left open for whatever works for the area, water or otherwise.

Mr. George: Okay.

Mr. Salerno: Well, why don't we ask if any of the people in attendance this evening would like to comment on the petition? Yes ma'am, just again, identify yourself for the record.

Ms. Garrity: Mary Garrity, 27 Waterville Lane. Mr. Chairman, could you have AvalonBay representatives comment on what type of fencing they propose that will be 6 ft.?

Mr. Salerno: Okay. The design?

Ms. Garrity: The type of material.

Mr. Salerno: They type of fence, could you answer that?

Mr. Roberts: The 6 ft. fence begins at this area as a privacy fence to mitigate sight lines to the parking. Then as we go along the wetlands it's a chain link fence which provides, I believe, the desired effect of prohibiting access back and forth between the sites. It allows us to install it a little bit more efficiently as it relates to it being within existing landscaping and is a little more invisible as it relates to the surroundings.

Mr. Salerno: Can you further define what a privacy fence is? Not to nitpick, but is it a stockade fence, is it a weave fence?

Mr. Roberts: Sure. It'll be a white vinyl fence that is completely blocks the view. The specifications typically are what you would see in a normal decorative blockade fence.

Mr. Salerno: So, it's a solid fence, plank type fencing?

Mr. Roberts: Correct.

Mr. Salerno: Does that answer your question ma'am?

Ms. Garrity: Yes, it does. And continuing with the direct approach this evening, I would say that, to use their words, they will not strike a deal with the abutter if there's any chain link fence in the plan at all, 6 ft., 10 ft. There are many males in a population that can pear over a 6 ft. fence. We're not looking for 6 ft. fencing and we will not accept chain link.

Mr. Salerno: Okay. Mr. Brackett? I deferred to him because I know he's billing you by the hour rather than have you go first.

Atty. Brackett: Thank you Mr. Chairman. As soon as I've finished my comments I've been told to leave so that I don't run up the clock.

Mr. Salerno: It won't be the first time Mr. Brackett.

Atty. Brackett: Mr. Chairman and members of the board, for the record, my name is Gary Brackett. I'm with the firm of Brackett and Lucas, 19 Cedar Street in Worcester. I

represent 23 families who are abutters and neighbors of this project. These residents are all along these property lines. Their property will be impacted by this project. If I may, I would just like to start off by commenting on a couple of what I would refer to as recent developments.

First of all, you should know that we did have a site meeting last week. Mr. Roberts and Mr. Schwartz joined Mr. Green and myself on site. We had hoped that the purpose would be to discuss our concerns regarding the setback of the buildings from the property line. Our initial demand to them was that they increase the setback to 250 ft. They had proposed to you in their application that they would setback the buildings 100 ft., a minimum of 100 ft., from the property line. They have not changed that position. There was no negotiation. They've essentially said they're staying at the dimensional setback that they proposed in their plans. When I indicated to them that our concern was more the buffer and the setback of the buildings from the adjoining single family homes I indicated that through some creative site design they might be able to take the units that are proposed in this corner in here and either by increasing the height of the remaining buildings and/or realigning the configuration of those buildings, they might even be able to accommodate that same density of 264 units on the site while satisfying our request for a 250 ft. buffer zone. So, when Mr. Roberts and Mr. Schwartz raised an issue about our major concern with density, our primary concern is with respect to the buffer, the nature of the buffer, the type of materials used in the buffer and the setback of the buildings. If they can accommodate 264 units elsewhere on the property, that concern is secondary. But, in the materials that they provided to my clients, they've indicated that if they were to accommodate a 250 ft. buffer that they would in fact have to reduce the project down to 192 units. Now, that's their calculation but that seems to show, Mr. Chairman and members of the board, a real lack of imagination because these are just site plans. These aren't building plans. The statute doesn't envision this process including detailed construction plans. It's to address a schematic design, the site plan of the proposed location of the buildings on the lot. Clearly, they should be willing to consider the potential for realignment of the buildings, reconfiguration of the buildings, and redesign of the buildings as to the number of units contained in each building just to address our concerns with the buffer, but they're not willing to do that. They made that absolutely clear to us last week.

The other thing I find interesting this evening is despite statements made by the applicant at the last hearing, I believe by my review of the file this application was filed on the 25th, so we're approximately at the 90 day mark from the filing of the application. Tonight they're providing you with information, for the first time at a public hearing, with a further revision to their list of exceptions. You may recall that I raised that question at the last board meeting. The board advised me that you had told the applicant that you would not accept a blanket waiver which they were looking for. They were essentially looking for a series of dimensional waivers. But, Mr. Chairman, in my experience working with Chapter 40B if there is a revision in the list of exceptions submitted by the applicant then just as the process envisions the application going to all the town departments, boards, commissions and committees for review, if there are amendments to the list of exceptions as a result of this board telling the applicant you won't grant a blanket waiver then each of those town departments, boards and commissions should have the opportunity to conduct that review to provide you with

written responses and then allow the members of the public to review those responses so that we can get a handle on the information that the board is receiving from those departments or, if necessary, we can attend the meetings of the board of health or the conservation commission or the planning board or any other town board or commission which may be considering the application as amended. That hasn't happened. For the record, Mr. Chairman, I haven't been provided with a copy of the revised list of exceptions despite the fact that I raised that issue at your meeting, I believe, on July 28th.

They indicate that they're continuing the discussion with the neighbors. Well, one thing the neighbors haven't seen to this point is any detail in writing either with a schematic design of what the landscaping would be for each of the properties or a written narrative of what the landscaping would be for each of the properties. The neighbors are in the dark. They have met with Mr. Roberts. It hasn't been necessary for me to be there. Mr. Roberts met directly with each and every one of them. They all have concerns about their property. They understand the right of the applicant to develop on the parcel. But, there's no question, Mr. Chairman, that if the applicant is proposing the density at 264 units, and by my calculation, if you use 20,000 sq. ft. lots in a single family zone as an allowed use in a Rural A, we're talking about what would be an allowed density of approximately 60 units, They're proposing density 4 /2 times the allowed density. Now, I realize the Commercial Business Zone does not have the same density factor as a Rural A Zone, but I'm trying to suggest that it's just as a standard to use because when you consider what they're requesting by way of an increase over what would be the allowed density in the zone, you have to really know how much of a factor of increase the application proposes.

We're proposing, in response to a 4 ½ fold increase in the density, an initial position of a 5 fold increase in the setback of these buildings because of the nature and the density of these buildings. That may or may not involve a reduction in the overall density of the project. But, I think, Mr. Chairman, one of the things that the applicant knows, and I would just remind the board of, that under Chapter 40B and under the decisions of the Housing Appeals Committee the applicant can only appeal to Housing Appeals if this board issues a decision with conditions that render the project uneconomic. Now, they would have to prove to you that this project would be uneconomic at 192 units or 220 units or 234 units, whatever density would be necessary to accommodate our primary concern of increasing the buffer to these adjoining properties. So, I think the important aspects, I think, Mr. Chairman and I thank you for bringing the point up, is what happens 60 days from now if we can't reach agreement with Mr. Roberts and Mr. Schwartz and their consultants as to the landscape plan, where are the neighbors? They're essentially factored out of the process. We're left at the mercy of the applicant as to the nature and the type of landscaping improvements.

Now, I would just briefly highlight, Mr. Chairman, because I know there are others who wish to speak, the points I raised in the letter that I provided to the board members. The first point, the 40B application is not complete.

Mr. Salerno: Does the applicant have a copy of your letter?

Atty. Brackett: Yes, I gave them one.

Atty. Schwartz: We just received it a few minutes ago, Mr. Chairman.

Atty. Brackett: I left it for them at about 6:30, Mr. Chairman. The list of requested exceptions, both use and dimensional exceptions, now if the list of exceptions, because I haven't seen yet, addresses that I think that's an issue that has to be discussed further because as I mention on the second page, the use as proposed by the applicant does need relief, variance relief, from both the use provisions of the Zoning Bylaw as well as what we would argue would be the dimensional provisions. I understand from the comments made this evening that the building inspector has met with the applicant to review the revisions to the list of exceptions. But, unless the building inspector has reduced that information to writing and provided it to the board, then they're at a loss to know what was presented and what was considered and what the building inspector's recommendations are to you. So, it's difficult for us to respond to the building inspector's position. I have a great deal of respect for his experience and training. Yet as abutters, we obviously have a concern about how the building inspector may be evaluating these particular issues.

The other thing I would mention is I think the planning board as the, I would use the term, guardian of your local Zoning Bylaw would have a vested interest in a review of the list of exceptions if there have been revisions. The planning board is responsible for the adoption and amendment of the Zoning Bylaw, for consideration of any amendments proposed in the community, obviously in designating use districts and table of use regulations, table of dimensional regulations. The planning board has a concern with respect to uses that address the basic elements of zoning, provide for the most appropriate use of land and prevent overcrowding of land, preserve value of land. Those are all purposed stated by Chapter 40A.

If I move to page 3, Mr. Chairman, item 3, our argument is the buffer zone is not sufficient to protect the adjoining neighbors. Even with the proposed improvements suggested by Mr. Roberts, as responded to by a member of the group, we have concerns about those issues. We believe that time should be invested by both AvalonBay, Mr. Roberts and his people, with the neighbors in trying to reach agreement. Our goal here, Mr. Chairman, is not to continue to fight the battle before you and in a court in judicial review. My suggestion to Mr. Schwartz and to Mr. Roberts last week is that we invest the time at this level to try and work out an agreement which can be incorporated into the decision. That way if the board accepts your decision and the neighbors accept your decision there aren't appeals by anybody, not to the Housing Appeals Committee by the applicant, not to the Superior Court or the Land Court by the neighbors.

On the issue of whether or not the conditions can be incorporated, clearly I would suggest, Mr. Chairman, I would defer to your experience dealing with issues of abutters, with problems that might have required variance or special permit rulings in the past. I believe that you can condition buffer requirements, improvements to neighbor's property if the neighbors, and my group of 23 families agree to these improvements on their properties and you can be assured of that agreement and if the applicant is willing to do that work and if those agreements are incorporated by reference either as an attachment to your decision or by way of specific incorporation in the language. I think that, number

1, it's a valid exercise of your regulatory power under the Comprehensive Permits Statute. You are required to review this application and impose such conditions as are necessary to not only protect the residents of the proposed project, whether it's water, sewer, fire protection, traffic safety or things of that sort, but also, the residents of the neighborhood and the residents of the community as a whole. So, under that broad umbrella that you have I think you can incorporate those conditions. Clearly, I will tell you that we've been involved in experienced with improvements whether it's infrastructure improvements or mitigation issues or neighborhood improvements which are off the site of the development. But, if there's an impact of the development along adjoining water and sewer lines and water and sewer lines need to be improved but they're actually located in public ways off the site, zoning boards have the authority to make those requirements, make those improvements a requirement of their zoning decision. That will clearly be acknowledged and approved by both the Housing Appeals Committee and Reviewing Court.

I've indicated that the board of appeals my address the proposed density of the project. If the applicant says we can't grant an increased setback without reduction of the number of units and we can't make a go of it financially if you reduce us from 264 down to some lower number, well, I think the applicant has to prove that to you. The applicant is entitled to a reasonable rate of return under the statute, the Code of Mass Regulations and the decision of the Housing Appeals Committee. Just as in any other case, Mr. Chairman and members of the board, the decision of this board is reviewed in the context of what would be the scope of appeal, what would be the issue on appeal. If you impose conditions and Mr. Roberts and Mr. Schwartz and AvalonBay don't like those conditions, they'll appeal it to the Housing Appeals Committee. The burden is on them at that level to prove those conditions render the project uneconomic. So, the question mark is how many units to they need to make this project economic and can they absorb an increased buffer and setback within either the existing number of proposed or some reduced number? I think that's an issue that still has to be considered.

The last thing, Mr. Chairman, I appreciate the time you've allowed me. We're respectfully requesting that the zoning board not close the public hearing this evening. There are still a number of issues we believe should be addressed not only by this board, but other town departments. If review by the engineering department and the building department has not resulted in generation of reports by those departments I believe they should. I think the public hearing process should allow for my clients and for me to come in and review those reports in advance of the public hearing, be able to speak to the issues raised in those reports and be able to address with you our concerns to see if those concerns are being resolved or are not being resolved by this ongoing process. So, I would suggest to you that since you are at the 90 day mark, that you are still fairly early in this process. I know and respect the contribution of volunteer members of zoning boards. It can sometimes be a very time consuming task. But, this is a project of 264 units. It has great importance to the town, obviously by virtue of support by the Selectmen, as a LIP project. But, what we're suggesting is investing a little bit more time at this level to try and address and resolve the concerns of the neighbors and to try and avoid the necessity of an appeal and negotiation of an appeal setting I think would be time well spent. We ask your consideration of that. I would be happy to answer any questions the board has.

Mr. Salerno: Thank you Mr. Brackett. While this is fresh in people's minds, would the petitioner like to respond to any issues raised?

Mr. Roberts: Sure. Thank you Mr. Chairman. I'll try to be brief. I guess, just going back to our meeting last Wednesday. I would suggest that the issue of switching buildings around was discussed. We did take plans out. I think we at least tried to indicate how that would be a difficult and in our opinion not an achievable situation as it relates to moving buildings. When you move buildings they need to be in a space and they can't be in wetlands. You have to park them as well. So, I think we did have somewhat of a dialog. I think at that point it was indicated to us by Mr. Brackett that the issue of landscaping and density or building locations was not something that they wanted to talk about separately. It was sort of both joined together. So, at that point while I continued to work towards a revised landscape plan based on our last conversation, to the extent that we can't agree on the density it might be a moot point. My hope is that we can continue and follow up with specific landscape plans. As it relates to, as an example, the chain link fence, the purpose of that fence is to prohibit access back and forth. I think the visual buffer is intended to be provided by both the landscape buffer as well as the site plan. We have reduced the elevations of some of the buildings facing the neighborhood. I think, as it relates to increasing the density on this part of the site, the perfect solution would be a single high-rise. We could put it right up against Route 20, but obviously from a marketing standpoint, that doesn't work. From a cost standpoint, that doesn't work as well. To go from 3 stories to 4 stories is a significant design change. We're putting elevators in. You'll need to park it in a confined area, so it's structured parking, different structural codes. They're significantly more expensive to build and, frankly, I think more of an urban product.

Mr. Salerno: Do your projects in other locations combine both of those types of units?

Mr. Roberts: No.

Mr. Salerno: You don't have projects that have 4 story and 5 story units and then still have the 2 story town houses?

Mr. Roberts: That is correct.

Mr. Salerno: I've been at one in Arlington, VA, that has parking garages, 6 story buildings and then has Georgetown type row houses.

Mr. Roberts: Perhaps in Arlington, VA. In the Boston market, we haven't.

Mr. Salerno: Okay.

Mr. Roberts: But, regardless, a 4 story structured parking building on this site, in our opinion, doesn't work.

Mr. Salerno: All right, the numbers don't work for you here?

Mr. Roberts: As it relates to just the impacts and the existing zoning versus what we're proposing, I do think you cannot ignore the front part of the site, which is commercially zoned. Our proposal, as it relates to density, which we worked through the Town of Shrewsbury in a LIP process has a total square footage that we could increase almost 40 % under existing zoning. We have setbacks that instead of 100 to 270 ft., could be 50 ft. We have buildings that instead of between 35 and 50 ft. are 25 and 37 ft. I think, as it relates to what could be on the site with existing zoning as it relates to what we have on site, again, I think we've made some good progress in creating a site plan that works and acknowledges the fact that we have a residential neighborhood behind us.

Mr. Rosen: I just have one question. Regarding your page 3 where you have the buffer zone as not sufficient and where you talked about the density, I don't agree with your argument about the density being 4 times or 5 times, but you mentioned that, since the density is 5 times, that the setbacks should be 5 times?

Atty. Brackett: Through you, Mr. Chairman. The problem with the 40B application is that, unless you use current zoning for density, you don't have a starting point and there isn't any maximum.

Mr. Rosen: Aren't you comparing apples to oranges comparing setbacks to density? I look at my B-2 districts. It allows duplexes. The lot size is not twice what a single family is and the setbacks aren't twice what a single family is.

Atty. Brackett: Yes. I understand that. I've gone through that table that with dimensional regulations both as to multi-unit buildings and apartment buildings trying to get some sense as to what an approximate density would be in a similar zone. There certainly aren't any similar types of zones in the immediate vicinity of this property. I use the 5 times factor because what we're looking for is an additional setback. We have proposed 250 ft. We believe that some creative design on the site could accommodate additional units elsewhere on the site. Is it a simple calculation? In fact, it is somewhat of a simple calculation. But, I ask you to look at the flip side of the issue. When the applicant proposed the number of units on the site, how did they come up with 283? Did they just say, well, let's see, considering wetlands and parking areas and things of that sort, how many units can we fit on this site, 283. Could it have been 324? Well, if they went to 4 story buildings they could have been 324. It could have been 480. There is not cap.

Mr. Gordon: You're saying you understand 40B? What's the maximum number of buildings that can be built on a 40B in this town?

Atty. Brackett: Well, I understand that it's 300 units, sir.

Mr. Gordon: Well, then let's stick to reality, okay?

Atty. Brackett: I understand, but what I'm suggesting is that that's come as a result of applicants in the past who propose large scale projects. In this case what they've done is they've come in just below the level. The issue is that while they have suggested that, the original starting point of 283 units on the 25 acre site, the question, I guess, would be

does this site really support that number of units and have you had that kind of analysis. I understand that the town planning consultant has given an analysis of this project and suggested yes, it can support that number of units. But, I think the important thing to consider is that if you're going to be increasing, if you use as a reference point just as the statute and the regs require a list of requested exceptions, the purpose is for the applicant to tell this board, using your existing zoning, this is how we need to change. Frankly, Mr. Chairman, the first list of exceptions didn't even reference the provision of the Zoning Bylaw that for which exception was sought. It simply gave a dimension, the proposed dimension, whether exception was necessary or not. So, if you wanted to review that and check it, you'd have to go back and search out each one of those as opposed to going to Article III, Section 3.1b to determine that point of reference. The point of reference should be the starting point for you to consider whether a 100 ft. setback is appropriate, 2 times the required setback for what would be a single family home when you're considering a density of almost 4 ½ times what is a rough calculation of density in that zone.

Mr. Rosen: I still think you're talking apples and oranges.

Atty. Brackett: I understand and I respect the point. The question, I guess, is in this situation we don't have hard and fast rules here. We have what the applicant indicates can be supported by the site and we ask the town to consider, given current zoning on that site, how much additional density should be allowed and how much variation should be allowed from the dimensional regs because in the final analysis, the zoning board has to go through and vote up or down on each exception. I would assume the board would not vote the exceptions as a group. So, you would have to determine for each and every exception is that an appropriate exception to the town rules and regulations. If you decide no, then the applicant has to prove that the denial of that exception renders the project uneconomic.

Ms. Murphy: Excuse me. I have a question. Mr. Brackett, you said that, in your opinion, the board would have to vote up and down each exception? Could you tell me where you're getting that from? Is there a regulation that requires that or don't we just vote on the 40B application?

Atty. Brackett: Oh, no. You fully have to vote each and every exception.

Ms. Murphy: Where does it say that?

Atty. Brackett: Well, I would suggest to you that I would be happy to give you a draft decision that we recently did for the Town of Bolton.

Ms. Murphy: Counselor, that's a draft decision you did. I'm asking you what authority you cite for the requirement that this board must vote up or down on each requested exception because, quite frankly, I don't see it in any of the regulations. I'm unaware of any case law which supports that. But, if you know some, then perhaps you might enlighten us and let us know.

Atty. Brackett: Well, I would use as a reference point, through you Mr. Chairman to Ms. Murphy, 760CMR31.02 which requires a list of requested exceptions.

Ms. Murphy: In the application.

Atty. Brackett: And I would suggest to you, having worked with this statute since 1975, that just as you would address a list of requested variances by an applicant from the Zoning Bylaw, you would not vote those up or down. You would look and act and evaluate each request for zoning relief. In this case, if the requested exceptions involved board of health regulations, planning board subdivision regulations, the Zoning Bylaw, the general bylaws, that you could not, I think, just as a matter of procedure lump them all together and vote it up or down.

Ms. Murphy: But, there's no case law to support that?

Atty. Brackett: Well, I would be happy to submit a brief. I recently reviewed the last 2 years of decisions in the Housing Appeals Committee for a seminar and I would be happy to give you a supplemental memorandum as to the Housing Appeals Committee response to approval of a comprehensive permit where only a portion of the listed exceptions was granted and the applicant claimed that they needed the other exceptions to make the project work financially. I think as a regulatory body, you are not left, I'll pull back a bit. You have 3 options under the statute. You have the right to approve the application as presented. You have a right to deny the application. You have a right to approve it with conditions that do not render the project uneconomic. And the third option you have would include up or down on the exceptions and then also the imposition of the conditions. You may have departments or boards or commissions who say, well, our recommendation is that you don't approve exception 1, 3 & 5, you approve 2, 4 & 6, but in addition to what they're asking for, we believe that the town needs the following protections based upon the engineering department report.

Ms. Murphy: So, we can impose conditions?

Mr. Salerno: That's right. You're approving conditions.

Ms. Murphy: We can vote it up, vote it down or approve it with conditions.

Atty. Brackett: But I would suggest to you, having spent 3 ½ hours with the zoning board one evening where they went through a list of 6 ½ pages of exceptions, and as I mentioned, I haven't seen a revised list of exceptions, that the exceptions have to be taken one at a time.

Ms. Murphy: I know that that's your opinion and that's why I asked you did you have any authority for requiring us to take them one at a time. I'm just not aware of that. I'm not aware of any regulations that require it and I'm certainly not aware of any case law which requires it. That may be your interpretation of it, but I'm just not aware of any particular case law which supports that.

Atty. Brackett: Mr. Chairman, just a closing comment. I think to recommend otherwise to the board, if the applicant were to recommend to you, you have to vote the list of exceptions up or down as a group, I would suggest to you that that's putting restrictions on your rights as a regulatory board.

Ms. Murphy: I didn't say that we had to.

Mr. Salerno: I don't think we have to vote the exceptions. I think what we do is we consider them and incorporate them into our conditions. I think what you're doing now is your merging the 2 concepts into 1. Mr. Schwartz would you care to respond? You've been sitting there patiently chomping at the bit.

Atty. Schwartz: I don't want to pile on it. I tend to agree, Ms. Murphy, with your position. In fact, I think Mr. Brackett's point of view reflect somewhat of a misunderstanding of the 40B process as distinct, say from the 40A process, variances or special permits, where the requested relief is really central to the application. In a comprehensive permit process, it's really the plan that's central to the application. It is true that the regulations require the applicant to list the exceptions that are required, but in fact, if you look at the guidelines that DHCD has put out, and I'll quote from you, "the decision should refer to the architects or engineer's drawings or plans upon which it is based. The decision may include a list of all waivers of local requirements being granted though this may be unnecessary if the plans are sufficiently detailed." In other words, DHCD acknowledges that it is really the plan that is essential in a 40B application and not the requested list of exceptions although we did need to specify them, which we have done and also point out that we've worked very closely with town staff to go through the applicable bylaws to make sure that we were being responsive principally, Ms. Murphy, to your concern about the catchall that we go back through with a fine tooth comb to pick up any technical details that we may have missed.

Ms. Murphy: Just as a point. I think the board needs to know what relief it is you're granting.

Atty. Schwartz: I understand and I appreciate and agree with that. If I might though, on one other point which I think really reflected a bit of a misunderstanding of the way 40B works. I think, if I understand one of Mr. Brackett's arguments correctly, he's saying well, this board can put it back on the applicant to show at 192 units, for example, that that's economic or uneconomic. I really don't think that's the way 40B works. We present a plan. If the board is satisfied with the plan based on the input that it received from staff and its own review, it will approve the plan. Otherwise, it can impose conditions. There are certainly HAC decisions which deal with the reduction in density when it is or is not appropriate.

Mr. Salerno: That's subject to the appeal.

Atty. Schwartz: That's not really the issue that's before us now. Especially, I would point out something that we really haven't beaten over anybody's head with, but especially in the context of a LIP application where density always being foremost in the minds of anybody when they're looking at a comprehensive permit application, having

gone through this pre-review with the Town of Shrewsbury and arrived at a density number that meets the needs of the applicant and meets the needs of the town, frankly, in terms of it's own subsidized housing inventory and other factors. So, I do think that it is, to the extent that Mr. Brackett's argument or part of Mr. Brackett's argument, is push them to 192 and let them tell you whether that's economic or not. I really don't think that's the way the process is supposed to work.

Atty. Brackett: Mr. Chairman, just briefly, if I may?

Mr. Salerno: Actually, I would just like to get some feedback from the planner. Do you want to comment on that?

Ms. Barrett: Well, I was just trying to be quiet. If you try to discuss this as a typical zoning proceeding, those arguments just don't belong in this context. The issue with the 40B proceedings simply is do you want to approve this project or are you going to deny it or are you going to approve it with conditions. As you know because you've had it said to you many times in this hearing and the previous two, you've got to be careful that you don't impose conditions on the project that make it uneconomic. The burden is not on the applicant to prove to you that they need 283 or 268, whatever the number of units is. When the applicant goes to the subsidy program and says here is my project, which Mr. Schwartz says here's the plan, the determination by the subsidy program in issuing site approval is essentially a statement this project's economic and if somebody wants to challenge that, it comes to you. I hate to say this, but the burden is on you to show that something less is still economic. It's not on the applicant. The applicant has met the requirement of the law by going to the subsidy program, putting in a proposal and subsidy program comes back and says this is a project. It doesn't mean density can't be reduced, but the burden is really not on the applicant.

The only other thing I would say to you is just listening to this discussion tonight and the last couple of hearings, I'm having a lot of trouble in your Zoning Bylaw finding where some of the so called relief is necessary. It sounds dramatic to say this project's 4 1/2 times base density. Well, as I think you all know, you have districts in this town for multi-family housing, for apartments where the density allowed by the Zoning Bylaws is significantly higher than this. Moreover, the state's standard for home ownership developments, they're roughly... This is a rental project before you that's roughly consistent with the state's standard for a homeownership project, which is typically less dense than rental. So, I think it's really apples and oranges to compare single family home density to multi-family density. I don't think you're going to get anywhere that way. I would argue instead that Shrewsbury has a usable tradition in its own zoning for varied density multi-family housing, pretty much anywhere from 4 on up to almost 20 units an acre. This project looks to me as though it's meeting your setback requirements.

Forth B and, frankly, 40A do not guarantee people who live next door buffers, berms, trees and fences. The bylaw guarantees a certain setback. It looks to me as though for all other uses the setback is met. So, I would encourage you to focus on what the real relief issues are in this case because I think that's where your jurisdiction lies in my 20 years of experience with this law.

Mr. Salerno: All right. Let's just get this gentleman because he's already stood up. Just identify your name again.

Mr. Kyriacou: Andrew Kyriacou, 24 Waterville. Madam, I would agree with you in terms if I knew I was zoned when I first moved into Waterville Lane, which I believe is Rural A zoned. I would totally agree with you if it was a zone for apartments. Your argument would be valid. What we're talking about here is changing what I assumed to be where I was moving to being buffeted by a Rural A zoning. I'm very happy that they would be putting homes on that property. So, your argument is not comparing apples with apples in my opinion in terms of it's already zoned and therefore we shouldn't do 4 ½ times. I agree with Counsel Brackett on that.

The other thing in terms of your comment in terms of well, you don't need to address, well, you do need to address because the town is so... I've been reading in the paper just recently, in the Globe, that if the town gets this, there's a 3 year moratorium on another 40B.

Ms. Barrett: Two years.

Mr. Kyriacou: Okay, 2 year moratorium. And you really want this. We want it too, but you understand the appeal process and you understand that we can hold that up in terms of that process and another development in that period of time of when we get to appeals.

Mr. Salerno: I wouldn't bet on that.

Mr. Kyriacou: Excuse me?

Mr. Salerno: I don't know if I'd take that to the bank.

Mr. Kyriacou: Taking it to the bank or not?

Mr. Salerno: The appeal process.

Mr. Kyriacou: I don't know if another development would come in, but I'm just saying it is also up to the town that wants to get this process done and completed in terms of also we are neighbors, we actually are paying taxes as well. So, for you to sit there and say you don't need to pay attention to any of the buffers, you don't need to under 40B, but only in the law doesn't protect us. I understand that you don't live in this town, but we live in this town. We are tax payers too. We vote for selectmen as well. Therefore, we would like to have some of our concerns addressed, which they have been. But, to come across and say you do not need to pay attention to any of the buffers, pay attention to any of the requests that we have is pretty ludicrous.

Mr. Salerno: In defense of that, I think the intent is to tell you how powerful 40B is. Your concerns are great and you ought to take it up with your state legislators because they're the ones that enacted 40B, not your selectmen and not the towns. They're the ones that said you built your house there and you spent \$600,000 to build that house and you bought it and you did your research and you assumed you were in a safe setting and

there were setbacks and then all of a sudden somebody drops a 40B bomb right next door to you. Well, guess who empowered them to do that?

Mr. Kyriacou: With all due respect, but also, the appeal process has helped us in terms of that.

Mr. Salerno: If I were you neighbors, I'd be on the phone to my state legislators, not your selectmen. They didn't do it.

Atty. Brackett: Mr. Chairman, may I just respond briefly to a couple points Mr. Schwartz made? I appreciate his concern about my blending 40A and 40B together, but I can assure you I don't have any problem distinguishing it. I spent 30 years as a municipal attorney starting in 1975.

Mr. Salerno: We do understand the adversarial proceeding and the interpretation of law, so let's get right to the point.

Atty. Brackett: I can recall working...

Mr. Salerno: I remember you, Mr. Brackett, go ahead.

Atty. Brackett: I know, Mr. Salerno. Mr. Bob Ingler, who's a 40B specialist, probably the preeminent specialist in the state, and I worked on the re-clarification of the Watertown Zoning Bylaw to bring it into affect with Chapter 808 of the Acts of 1975. So, I understand 40A and 40B.

The starting point, simply stated because Mr. Schwartz's representation to you is completely inaccurate, the reason 3102 of the CMRs requires a list of requested exceptions is you first look at the zone in which the lot is located. Then, in order to take advantage of the fact that 40B allows you to seek to suspend all applicable zoning and other regulations because it's one permit for all town boards. The applicant has to give you a list of requested exceptions, not just to the Zoning Bylaw, but to each rule, regulation, general or Zoning Bylaw of the town. That's listed as paragraph number 8 of the Elements of A Complete Description of The Application. Now, if, Mr. Chairman, suggesting Mr. Schwartz's position and to respond further to Ms. Murphy's question, if your board of health came back and said of the 5 requested exceptions to the local board of health regulations we recommend in favor of 2 and against 3, if your planning board came back and said the following subdivision regulations apply, if your conservation commission said under your local wetlands bylaw, if you have one, we recommend approving the following waivers and denying the following, each board or commission would weigh in as is recognized in the model rules of DHCD, would weigh in to this process because you are the umbrella agency. If your respective boards and commissions were to say we want you to give them approval as to 2 out of 5 exceptions or 3 out of 10, Mr. Schwartz's position would be your hands are tied. You have to approve it up or down based on the plan and the original list of requested exceptions.

Mr. Salerno: Isn't the operative word "recommendation" from the other boards?

Atty. Brackett: But, they are recommendations. But, Mr. Chairman, I would suggest just as I assumed that this board considers the recommendations whether it's the building inspector, the planning board or other town departments, that you would have to evaluate each request for exception individually. I will tell you that having met with the zoning board of appeals in other community where a 228 unit project was proposed on 10 acres of land off of Route 3 between 495 and 128, that board of appeals spent 3 ½ hours one night going through with the applicant each of the exceptions in a 6/12 page list of requested exceptions. That was just to consider them up front. Then when it came time to make it's decision, the board had to go through, and I assume you consultant has had the same kind of experience if she's worked with zoning boards of appeals, they now have to determine, based upon the input we've received from our town departments, boards, commissions and committees, do we grant exception 1 or deny, exception 2 or deny. Now, I don't know any other way to approach it, Mr. Chairman. I would suggest that you don't have to take my word or Mr. Schwartz's word. You can designate someone to call Werner Lowey, the chairman of the Housing Appeals Committee, tomorrow. My partner recently served as a member of a 15 person, statewide advisory committee on HAC regulations. Mr. Lowey is a straight shooter. He's not going to favor one side or the other. He will tell you straight out, in making your decision do you have the authority to grant or deny the list of exceptions item by item as opposed to having to grant them all or deny them all. I would assume that his answer would be to you that you have the authority to make a decision item by item in the request for exceptions, included the starting point of density. If you believe that the density is too great for that site, whether it's the acreage, the abutting properties or other considerations, traffic considerations and things of that sort, you have the authority to address the density.

I close with this example. I was involved with a project in the City of Woburn, which was before the limitations were placed on the statute, which proposed 640 units in a single family zone. Zoning would have allowed 112 single family lots. Arch Stone Properties proposed 640 units. After a year's worth of consideration, the zoning board approved it at 300 units, granting some exceptions, denying others and imposing conditions. After a 27 day hearing before the Housing Appeals Committee the Housing Appeals Committee found that the applicant did not prove that our decision rendered the project uneconomic. But, the Housing Appeals Committee went ahead and decided to approve it at 420 units rather than the 640 proposed or the 300 granted. Now, I will tell you, based upon that experience, the hearing officer on that case was Loren, Rickley and Stiller and has been hearing officer for the Housing Appeals Committee, that when she went through that decision, she evaluated each and every condition and each and every request for exception to determine whether or not they met the letter of the law. So, this board has more authority than the applicant's attorney or even your own consultant wants to suggest that you have. You don't just vote this up or down on the site plan. The site plan is 1 of 8 components of the complete description.

Ms. Shapiro: Erin Shapiro, Waterville Lane. Mr. Chairman respectfully suggested that we take it up with the state legislature. We all know that at this point in time we can't rewrite history. We know that even though there is legislation sitting up on Beacon Hill, by the time it's acted upon it's not going to affect anyone in this room. We're in your hands right now. I'll be candid with you. I feel as though the concerns of the abutters have been met with deaf ears in this town. I hope all of you prove me wrong. It's my

impression that this town concerned with the retail in the front and the financial contribution you're going to get for this fire station. More so than the Town of Shrewsbury and any other resident in this town, we are going to be most impacted by this project. I urge any of you to stand in any one of our backyards and look and visualize how much this project is going to affect our use and enjoyment of our property. Mr. Roberts suggested that they have changed some of the elevations. What he failed to tell you is that the building that is largest in size and number of units is sitting in my backyard. Why is it not going to be situated up in the front? I don't think they're sincere when they're telling us that they can't change the density. Certainly they have the power to do so. Certainly you, as a board, are empowered to change the density and look at this while it's not impacting their profitability and we can all be happy.

Mr. Murdock: David Murdock, 19 Waterville Lane. First of all, clearly, I echo all of the comments that have been made. But, what I want to point out is to me I think there is some miscommunication or mis-clarification around this word we throw out sometimes called "buffer." I think it's a point that is some of the contention why we have not, as abutters, come to agreement yet with Mr. Roberts and Avalon individually, is that there really are 2 collectively different issues at hand here.

Number 1, there is an esthetic and landscaping buffer. I don't even want to call it a buffer. It's really just a landscaping plan. Clearly, each one of us has a different view on what I want on my property and what each one of my neighbors want on their property from the landscaping standpoint. That would be the trees, the berm and whether or not there's a chain link fence on there, which as Ms. Garrity mentioned, nobody wants anyway. Why that's still on the property is beyond me as Michael Roberts has brought up.

Issue number 2, which we've addressed in writing to this board and said in our prior 2 hearings, that we all want as a neighborhood a buffer zone of, setback I think as our attorney and counsel has represented. That I think is what we're referring to as a buffer. We want a property setback, a distance buffer set that as a group we all agree to, which we propose at 250 ft. Individually, however, we only want varied landscaping or esthetic buffers, if you will, that may individually impact each one of us. It was in our opinion different to what Mr. Roberts just stated a few moments ago. Those are separate issues. They are not one and the same. We all don't want very different landscaping packages as well as some 250 ft. setback. We all want a setback, period, if we can get it. That's what we ask of this board. Secondly, we all would like a different landscaping package based on our individual lots and our home ownerships. That is what, at least from my standpoint, I'm willing to agree to, have an agreement with Avalon as to what is in my property from a landscaping standpoint. I would urge consider asking that particular point to all of my neighbors. We've asked the board to look at the setback as a whole, which is separate and apart from what landscaping and what trees they put on the property.

Mr. Salerno: Yes, ma'am.

Ms. Garrity: Mary Garrity, 27 Waterville Lane. I have a question about the traffic study that was reviewed at the last hearing meeting. There were some pictures of proposed

traffic lights. The question is a picture is a whole lot different than a stop light. It concerns me that the ZBA is looking at another project that's going to bring more residents to that neck of the woods of Shrewsbury. We don't have a stoplight outside the YMCA. They've been talking about it for years. So, if it's going to end up on their paper and it's going to be part of their plan saying it's got enough traffic lights, we did the traffic studies, everything's safe, we don't need any more traffic lights, when can the residents of Southwoods expect the traffic light they're using saying they have enough traffic lights? When is that going in in front of the YMCA?

Mr. Salerno: I don't know.

Ms. Garrity: So, if we don't, how can it be part of their plan saying traffic flows fine, we have enough stop lights if it's only a picture on a piece of paper? We don't have a stoplight. So, how can they put a shovel in the ground when there is no stoplight? How can that be part of their traffic study?

Mr. Salerno: Are you suggesting that they bear the burden of making the improvements for traffic under 40B?

Ms. Garrity: If they're going to use it as part of their traffic study saying that stoplight exists and it's there, it's what we can expect as residents, then absolutely.

Mr. Salerno: Mr. Perreault, do you know?

Mr. Perreault: Jack Perreault, Town Engineer. From our discussions with the contractor who is working for the developer of Boston Hill, the work on that widening and traffic signal should start within a week or two. They originally scheduled for the 16th to begin work, however the contractor is finishing up another job and hasn't moved in yet.

Mr. Roberts: Mr. Chairman, if I could, just comment. Rick Bryant from Rizzo is here. Correct me if I'm wrong, but I believe our traffic study is not contingent on that stoplight being there. It was included in the analysis just as it relates to future projected improvements and in our discussions with Mass Highway as it relates to connecting those improvements to the front of our site where we'll be widening Route 20.

Mr. Murdock: David Murdock again. In our list of requests that we had asked Avalon, which were brought up at the last meeting, one of those which is in my letter dated July 14th, I believe, was that the buffer zone, that the actual setback, we requested that be put in the covenant or deeded in the covenant that it would not be built upon in the future. Mr. Roberts at that time said that was something they would be willing to consider but I haven't heard that issue even addressed as to would they agree to that restriction for future purposes or not. I would like to find out if that would be something we could have addressed.

Mr. Roberts: Mr. Chairman, we are willing to abide by that request.

Mr. Salerno: Mr. Murdock, in your letter, too, you wanted an 8 ft. privacy fence along the entire border?

Mr. Murdock: If I may, first of all, while it came from me, that is on behalf of the entire Southwoods residents. Our request, it can go into what Mr. Roberts brought up earlier. The request was to have a privacy fence along the entire back or the south end of the Avalon project. As proposed so far, there was a small one. If I may come up and point at the board, there was a small one proposed right along their current propose parking lot, which is, I don't know what the distance is, but some point in time off of their property.

Mr. Salerno: Is that 100 ft.?

Mr. Murdock: I couldn't tell you. I don't know what that exact number is, but I've got to believe it's going to be closer to that area from my memory and recollection. If you want to answer that, is that 100 ft. from there to there?

Mr. Roberts: Correct.

Mr. Murdock: Okay. So, there is a privacy fence proposed here and then what was proposed on our landscaping was a chain link fence effectively going right along their property line, which obviously is right along the berm and the landscaping buffers, which I oppose and I think many of my neighbors oppose having the chain link fence. What we asked for as a request was to have that privacy fence extended, but along that 100 ft. line, effectively on their property. We don't necessarily want to look right out my window 20 ft. from my house or my deck at a fence. If I wanted a fence, I would have put one and I think I can speak for most of my neighbors. If they wanted a fence, they would have put one. Nobody wants a fence, but we would like a privacy fence, again, I mentioned this at our last meeting, for security purposes and really just to block the view of what we see. We'd like that privacy fence well onto their property, but bordering where they're proposing putting buildings. That's what we propose, not a small one and then a continued chain link fence down on our side. Clearly, that was something that we haven't come to an agreement with, which is clearly another area of contention, why we don't all have agreements individually, because the fence is an issue. It's not an issue of what we want from a landscaping standpoint, which is why I try to clarify the 2 distinct issues. The fence is an issue of security and privacy that we want well into their property line. The landscaping is something completely altogether different from that.

Mr. Rosen: So, if it was an 8 ft. privacy fence 100 ft. back along the whole property line, then we forget about the landscaping?

Mr. Murdock: That's what we requested.

Mr. George: Don't you think the landscaping would provide better screening with the, what is it a cyclone fence that you're putting up, chain link?

Mr. Roberts: Chain link, yes.

Mr. George: Wouldn't that give you better privacy than an 8 ft. privacy fence?

Mr. Murdock: We requested both. But, is a tree going to provide better security, clearly not. I have young kids. Do I want people waking from their parking lot straight into my back yard, no. We requested a privacy fence and that's what we've asked for. I think we'd also like to have landscaping, which is an esthetic buffer so that we don't look at buildings.

Mr. George: So, you're looking for the privacy fence to give you the security purpose?

Mr. Murdock: I think that would be the main issue, yes.

Mr. Gordon: You don't care about the berms and the trees?

Mr. Murdock: No, we do care. I said that they are 2 separate and distinct issues. We want, as a neighborhood, the privacy fence along the southern edge of the property. I think we would also all like to have the offer that Mr. Roberts and Avalon have made to us by having an esthetic buffer through landscaping. I just think we all vary based on each one of our individual properties as to what we would like. I know what I'd like based on where my lot sits and where their property line is in relation to that. But, my neighbor, whose property line is abutting directly their property line because mine is slightly offset from that, what berms they would want and where that want that based from the current land and vegetation and trees that are already there. It's clearly different. That should be and I think that our condition, our request, was as an individual agreement or an individual exception. The fence is just for privacy.

Mr. Salerno: How do you do that logistically? You're asking us to consider something like that and us make it a condition. But how do you, logistically, do that if the topography of your lot is different than 2 neighbors down and they want a berm? How do they blend that into the next neighbor's yard and then bring it back up? I mean, schematically, I don't know.

Mr. Murdock: I think Mr. Roberts has done the majority of the landscaping and berm for each one of our properties. Am I not correct?

Mr. Roberts: Correct.

Mr. Murdock: I think the issue really is a fence. That's probably been the hindrance as to why he hasn't gotten an individual agreement with every one of us.

Mr. Salerno: So, you're saying that the landscaping on each lot for the most part has been worked out. The remaining issue is what?

Mr. Murdock: I couldn't speak 100 %, Mr. Chairman, but I believe, for my property, that is the case. We've already agreed with Mr. Roberts on what berm, what trees and what landscaping design I want for my particular property. I know my neighbors have talked to him,

Mr. Salerno: Have you done that with all of the abutters, Mike?

Mr. Roberts: We have. There are some follow-up items that we just need to make sure that we can engineer, such as bringing in fill so that we put the trees on our land instead of taking up back yards. So, just a couple of things I would like to say.

Mr. Salerno: Is the fence the sticking point as to why you don't have agreements for everybody, because that's what you're saying?

Mr. Murdock: Well, no. I'm saying that that definitely is an issue that you have raised that we don't want a chain link fence. You've raised a separate issue which is our request for having a privacy fence that is not along the landscaping. It's further in. They are 2 issues, Mr. Chairman.

Mr. Roberts: And setbacks of that.

Mr. Murdock: That's a whole other issue, Mr. Roberts. As you know and I think we've stated many times, regardless of what the setbacks are, I think we do have an individual request for what I would like as a landscaping. Granted, whether your property is here or here, I don't think that changes what berms or what trees you have requested for me.

Mr. Salerno: Why wouldn't it? Wouldn't it have a direct impact on the conception?

Mr. Murdock: If they're willing to put it in, am I willing to not take it? I think we're all adults here. If they're willing to give me a berm and they're willing to give me trees, regardless of whether this apartment unit is here or not, which we've requested to be removed or moved, would I not want to take it? Let's be honest here and very candid.

Mr. Gordon: So, if you took it, you still wouldn't be satisfied unless they took the building down?

Mr. Murdock: I think having trees there clearly helps to alleviate my vision of this. But do I want it there, no.

Mr. Gordon: Well, I'm just trying to understand. This is a hearing and we're trying to get information.

Mr. Murdock: I think you all have a power to speak for our rights as town and hopefully we're getting those through to you so that you can make a decision for our benefit just as much for the town's benefit.

Mr. Gordon: I'm getting mixed reaction here.

Mr. Kyriacou: I think there are 3 parts. I think everyone is in agreement. They've met all the abutters in terms of then landscaping. I don't think that's an issue.

Mr. Salerno: Well, we're not so clear on that so let's not take that for granted. You're saying that they've met with all of you abutters, they've worked out the details of what they're going to do for landscaping on your property lines?

Mr. Kyriacou: Correct.

Mr. Salerno: Are we all on the same page with that?

Mr. Kyriacou: The fencing, no. They said that it's a chain link fence versus the request was a full privacy fence.

Mr. Salerno: And they've only committed to a privacy fence at the rear where the parking is going to be?

Mr. Kyriacou: Correct, but not throughout the entire site in the back.

Mr. Salerno: Alright. So, if they brought that privacy fence and replaced the chain link fence with that, are you saying then, I think was what Mr. Gordon's was, the landscaping that they've offered to you, if they replace that chain link fence with the privacy fence, is that satisfactory?

Mr. Kyriacou: Then the third piece is...

Mr. Salerno: No, no, answer that question.

Mr. Kyriacou: No.

Mr. Salerno: Then there's no sense talking about that.

Mr. Murdock: If I can add?

Mr. Salerno: Hold on.

Mr. Murdock: I don't want to stop Andrew's comments, but I think you should know, based on where he is, I think no sense putting the chain link fence where they propose. We don't want it replaced in the same location with a privacy fence. We want the fencing moved to a different location from that of the landscaping.

Mr. Rosen: That's what I have a hard time getting around. When I said before, if you have 100 ft. back going off of your line with a 12 ft. fence, then why do you need landscaping on your own property?

Mr. Murdock: With all due respect, I have done some landscaping, but is that going to stop a 3 story building from my sight, no. I've already got it heavy woods if which they're going to cut the majority down to build a parking lot and a building. Is that going to block, with deciduous trees, the building from my sight? The answer is no.

Ms. Murphy: So, what you're saying is that the landscaping is what is visually going to block it from your sight?

Mr. Murdock: I think it will help to alleviate it. Is it going to going to block it? No, ma'am.

Ms. Murphy: So, my question then is, if it's the landscaping that's going to do the majority of the blocking and you want a fence around the property in order to insure that somebody's not cutting through, why would you need a privacy fence in addition to the landscaping? Isn't that duplicative. I'm sorry, but didn't you just say we would want a fence for the privacy? I'm sorry, the security issues of people walking through?

Mr. Murdock: Yes. Is that not 2 distinct issues?

Ms. Murphy: No. I guess what I was hearing was that you wanted not a chain link fence, but a privacy fence in order for each property owner to have privacy.

Mr. Murdock: I think we're using the term privacy fence because that's the most delineable term that we all understand.

Ms. Murphy: A solid fence. Okay, so you want a solid fence so that somebody isn't looking through onto your property, correct?

Mr. Murdock: We want a solid fence for that reason as well as for the security of our children.

Ms. Murphy: Okay.

Mr. Murdock: And for the impediment of people walking onto our property.

Ms. Murphy: But a link fence, in your opinion, would not give you that?

Mr. Murdock: That's correct.

Ms. Murphy: Why, because somebody's going to climb it? Is that what you're afraid of?

Mr. Murdock: I think it's yes and clearly the aesthetic look of a chain link fence 20 ft. off of my deck or off of any of our decks is not something that we want, which is why we've asked for the fence to be well beyond our property.

Ms. Murphy: Well, that's what I'm trying to figure out and, I'm sorry about this because I'm a little bit confused, but if you don't want it 20 ft. off, but you want it in, you don't want to be looking at it, correct?

Mr. Rosen: Isn't the landscaping going to cover the fence?

Ms. Murphy: You want the landscaping to cover the fence?

Mr. Murdock: No, we want the landscaping closest to our property.

Ms. Murphy: Closest to your property so that you don't have to look at that fence?

Mr. Rosen: Wouldn't that block the fence visually, the landscaping?

Ms. Garrity: Who cares.

Mr. Salerno: Just wait.

Ms. Garrity: Could you try...

Mr. Salerno: Sir, in the yellow; you've been patient. I want to give you an opportunity.

Mr. Garrity: Rich Garrity, 27 Waterville Lane. I think what may be confusing the issue here is that the landscaping plan and the fence discussion, while we've had discussions with Avalon about that, the fact of the matter is that the way the complex will be situated from an elevation standpoint, there will be some parts of the neighborhood where that elevation will be such that a berm and the landscaping plan you will still have units that are significantly elevated where people will be kind of looking down on us. The fact of the matter is that this all kind of runs together and it is a little confusing, but the fact of the matter is that it is very difficult to agree on a landscaping plan when the elevation of those particular units varies so much. I don't think the landscaping plan, to this point, has adequately addressed the issue of elevation in some locations. I mean, the elevations are such that they are very high where people on the second floor will be looking directly into our second story home.

Mr. Salerno: Are you suggesting that there's even a possible scheme between landscaping and privacy fences that's ever going to stop that?

Mr. Garrity: I think that the third element would certainly address that. That is the buffer. Between buffer, landscaping plan and fence, if we can come to a decision on that, the neighborhood would be very happy. Excuse me, the setbacks. So, it's the setbacks, it's the landscaping plan, it's the fence. It's real simple.

Mr. George: Do you live in Lot 28?

Mr. Garrity: Twenty-seven.

Mr. George: Twenty-seven?

Ms. Garrity: Twenty-six.

Mr. George: So, the only lots affected really are 28 and 27 and maybe Lot 22?

Mr. Garrity: Well, I'll tell you sir that my line is close to that.

Mr. George: Not in my observation of the plan.

Mr. Garrity: No. I'm going to respond to that. I will tell you that my lot, 26, is such that the, I just put a swimming pool in there. Those 2 story condominium will be in some cases 127 ft. from my swimming pool at an elevation that no landscaping plan that I'm aware of what's suggested is going to prevent people from peering in.

Mr. Rosen: Excuse me, is that the Rural A piece where you're abutting? So, if it was a 2 story colonial back there, would that be any different?

Ms. Garrity: Yes, because maybe 4 people would live there, 5 people.

Mr. Rosen: But, it could still happen. I'm talking about the view?

Ms. Garrity: First of all, we back up to a wooded area. The wooded area is almost 100 % deciduous. The whole thing of the landscape berms was because in New England, I don't know, 8 months a year, whatever, there's not going to be any wooded area. There are not going to be any leaves. There's going to be no visual barrier, no wooded barrier. So, that's why I want landscaping.

Then, we want security, privacy, a little bit of barrier for noise. That's why we want an 8 ft. privacy fence. So, yes, we want both. We want the berms, then we want the 8 ft. privacy fence and we want increased buffer. Those are the 3 things that we want.

Mr. Salerno: But, I think what you were asked ma'am was that if another person built a home similar to yours, they're only required to be so many feet off of your rear property line and, as Ron has suggested, if they built a 2 ½ story colonial, they would have the same point of view down onto your property?

Ms. Garrity: That's just one issue. They would own probably 2 cars and like I said, there might be 2 people.

Mr. Rosen: But those are 2 separate issues. I'm just talking about the view from where the top floor of the house is?

Mr. Garrity: I'm Rich Garrity.

Ms. Garrity: We live together.

Mr. Garrity: Yes.

Mr. Kyriacou: They're married.

Mr. Salerno: This is Massachusetts sir, we don't care.

Mr. Garrity: Your question about a 2 story colonial, I don't know that the 2 story colonial is the same elevation as those townhouses that Avalon is proposing in my backyard. I suspect it's not.

Atty. Schwartz: Can we respond to that?

Mr. Salerno: Yes.

Mr. Roberts: Obviously, this is an example. As far as elevations are concerned, if you're sort of standing at the pool towards the back of the yard, here, you're at approximately, let's just say, zero elevation. If you're looking at this town home, from the lot line to the town home, is about 120 ft. The ground floor there is about equal. This is a 3 story elevation in the rear here. This is a 2 story elevation. So, it's 25 ft. in 2 stories, at about the same level. Now, what we've talked about, if you look at the pool that was just put in, there was a pretty significant amount of fill brought in to get the pool level to the back yard. So, the issue was we don't want to put landscaping, and we can't, on a pool deck, so we have agreed in our discussions that we'd bring a bunch of fill on our lot, create the landscape buffer, again filled up to the pool level. We had proposed evergreen trees. In other lots we had propose shade trees just to mix it up, but we assumed that they didn't want a shade tree next to the pool. I think in our conversations that that was something that they might be amenable to, so we can put a couple of shade trees. The end result would be a landscape buffer, bringing in the fill, bringing it up to grade, story home, 120 ft. away from a 3 story elevation, existing landscaping between us, is it no home? No. There's a home there, but we think it's pretty reasonable. We happen to think that our residents in this neighborhood are going to enjoy the views of the landscape as well.

Mr. Gordon: I understand that we may not be listening. One of the things I hear is that we're listening to moving targets, that every time a concession is made, a concession is asked. Now, that's very good in negotiation. But, I think we all have to be realistic in that nothing is ever going to be perfect. Now, I don't know how reasonable it is to build a fence into your land so that no one will see it, but it will provide the security. Now, security is not a solid stockade fence. Security is security.

A berm is another matter. But then a setback is a third matter. Now, I'm hearing all of this, but I don't know how much of it I'm willing to accommodate. I mean, let's get real and decide what the significant issue is and make a decision on it either tonight or whenever. But, I don't want to keep we want this, oh you're happy with that, we want this, we're happy with that, but now we want this. We're listening to you. This is a hearing, a public hearing where you give your ideas and we give ours and they give theirs and nothing happens until after this hearing closes. But, let's get to the point where we have issues that are concrete as opposed to every time a concession is made on one side or the other another issue is brought up. I don't want to grow much older here.

Mr. Salerno: Mr. Murdock?

Mr. Murdock: Mr. Chairman, and with all due respect to Mr. Gordon, we are not making subsequent concessions. We have listed the same concessions every single hearing that we've been at. I put them in writing again in my letter dated July 14th of this year. They are the exact same thing we're speaking of today.

Mr. Salerno: Well, you want requests. You're asking them to make concessions. I think you've got your terminology a little switched.

Mr. Murdock: Our requests were addressed to Mr. Roberts and put in writing to you. The requests stand as they are today. I don't have the letter, but our attorney does. We

are happy to provide it to you if you don't have a copy again tonight. But, they list number 1, we want an extended setback of 250 ft.

Mr. Salerno: We're on board with that. Not to cut you off, but we know it.

Mr. Gordon: So, we have those issues. You saying we're not listening, but we have those issues. So, after the hearing is closed, we can make a decision on things that we have.

Mr. Murdock: No disagreement. All I'm saying, with all due respect, is the fact that we are not asking for one and then another and then it keeps changing in a myriad of events. We've asked for the same 3 things all the time. We're simply not getting any feedback as to those requests. That's why we keep raising them, I think, so eloquently from our counsel that we are trying to get some empowerment from this board on our behalf to say what are you willing help us address with AvalonBay.

Mr. Gordon: A hearing is a hearing until it's closed. Then the board makes a decision.

Mr. Roberts: I guess if I could just be clear on what our position is, on the landscaping, again, we are willing to continue our discussions. I think we're conceptually in agreement as to the type of things we can do. As far as the fencing is concerned, we do not agree that in addition to sort of an 8 to 10 ft. landscape buffer we need an 8 ft. fence as sort of a 2nd buffer. I mean, logistically you run it here. If you go through here, you're going through the wetlands, which we don't want to do. As you get through here, you're blocking the views of our residents, our neighborhood, to be able to look at the wooded buffer. I agree, a 4 ft. chain link fence doesn't provide security, so we agreed to 6 ft. We could string it through here. It's wooded. We don't have to cut down trees, it mixes in and you're not going to be able to see it through the landscape buffer. That's what we would agree to. I'll continue to work with the neighbors. I'm sure we can come to consensus on this. But, it's not going to be an additional 8 ft. privacy fence.

Then, as far as the setback, we've always disagreed. We think that the setbacks at 250 ft. essentially eliminates this neighborhood, eliminates this and we feel our setbacks, as we've described before, are more than reasonable.

Mr. Salerno: Okay, anybody else?

Mr. Kirk: Chris Kirk, 40 Westford Road. Just one question. Does a 40B project like this influence development elsewhere in the commercial zoned district because it's basically a use that's prohibited in a commercially zoned area? If the abutting parcels are developed as commercial use as, say, a truck refueling station, it's going to generate nuisances in sound, smells, noises, smoke and so forth. Is this Chapter 40B development basically going to be treated as a regular residential development? They'll be able to file litigation against their abutters for producing nuisance or do they have to put up with any nuisances? In other words, would an abutter be discouraged from developing a commercial property next door because of this?

Mr. Salerno: I don't know. Would you build a commercial project next to it?

Mr. Kirk: Well, there is going to be a commercial project as part of their development. But, AvalonBay is basically going to, I believe, contract that out or their going to have some measure of control over what goes in there, but they may not have over the abutting parcels.

Mr. Salerno: I don't mean to be rude. You're asking us a question that's hypothetical. I don't know how we could possible answer that.

Mr. Kirk: I was thinking, has AvalonBay developed parcels in nonconforming zones elsewhere in other towns, Westboro, any of their other locations?

Atty. Schwartz: We have. Avalon has developed parcels in commercial business districts before. I'm thinking of 1 or 2 examples. In Danvers on 114 is a recent example of one that's just being constructed, as you may know, 114 is a pretty heavily trafficked business district, and has generally not found that it's a barrier to other businesses being able to successfully develop there.

Mr. Salerno: So, I guess, to simplify your question, is there any documentation that by allowing a 40B development it discourages commercial development in the abutting zones? I don't know if there are any statistics for the answer to that.

Mr. Kirk nodded his head yes.

Mr. Salerno: Okay, well seeing no further inquiry, members of the board, are you prepared to vote on this?

Ms. Murphy: Mr. Chairman, if I may, I would make a motion to close the hearing and then to set a specific date for the board to discuss the plan and vote on it.

Mr. Gordon: I second that.

Mr. George: I'm in favor of that.

Mr. Rosen: I'm in favor of that.

Mr. Salerno: The motion is to close.

Ms. Murphy: First, to close the hearing.

Mr. Salerno: The public portion of this?

Ms. Murphy: Yes.

Mr. Salerno: And, then to have another meeting?

Ms. Murphy: You might want to do it in 2 separate motions.

Mr. Salerno: Close this hearing, the public portion of the hearing, continue the meeting for a panel discussion.

Ms. Murphy: Yes.

Mr. Rosen: I second that

Mr. George: I second that.

Mr. Gordon: I second both of those.

Mr. Salerno: I'm prepared to agree to that. So, at this time then by a majority vote of the board, the public hearing portion and the presentation of evidence before the board would be closed. The board will continue the meeting for purposes of deliberation and discussion.

Ms. Murphy: Yes.

Mr. Salerno: Yes, yes, yes. It appears that that's where we stand at this point. Thank you. Thank you all.

Mr. Gordon: Mr. Alarie, do you have a date that we can meet?

Mr. Alarie: Our next scheduled hearing is September 14th. We have 10 hearings to be held that night.

Ms. Murphy: Could we set just a separate date to do this?

Mr. Salerno: Sure, a continuation of this special meeting. We can continue it for the deliberation portion.

Ms. Murphy: I mean, this is the only thing that would be on the agenda.

Mr. Salerno: What's the room availability?

Mr. Rosen: When is the room available?

Ms. Murphy: Or any room?

Ms. Garrity: Is that an open meeting even though it's not a public hearing?

Mr. Salerno: It's a continuation of this meeting. The deliberations or discussions aren't any different than what you've been involved with, ma'am, for the last couple of meetings.

Ms. Garrity: So, we're able to come even though we can't comment?

Mr. Salerno: There'll be no further presentation of evidence. Whatever time the discussions might take, it might be fresher to start with a new meeting.

Mr. Alarie: Are you talking after September 14th?

Mr. Salerno: Well, no.

Mr. Alarie: Linda's going to be on vacation for the next 2 weeks and, if we have to give notices and prepare the minutes, we need some time.

Mr. Salerno: You are, Mr. Alarie? When will you be back?

Mr. Alarie: Linda will be out.

Mr. Salerno: When will Linda be back?

Ms. Lane: I'll be back on the 13th.

Mr. Salerno: Of September?

Ms. Lane: Yes.

Mr. Rosen: Our next meeting is the 14th, isn't it?

Ms. Lane: Yes.

Mr. Rosen: Is that scheduled?

Mr. Alarie: Yes.

Mr. Rosen: Okay.

Mr. Salerno: So, you're going to be gone from?

Ms. Lane: From this Friday until the 13th.

Mr. Gordon: How about the 17th, Friday the 17th?

Mr. Rosen: How about the 21st?

Mr. Alarie: The room's not available on the 21st.

Mr. Rosen: How about the other room?

Mr. Alarie: Neither room.

Mr. Salerno: How's the 23rd?

Mr. Alarie: The 23rd is taken by the school and the Lake Quinsigamond Commission.

Mr. Gordon: The Lake Quinsigamond Commission is on the 22nd.

Mr. Alarie: I'm sorry, the 22nd is taken, the 23rd is open.

Mr. Salerno: Bridget, is the 23rd of September available for you?

Ms. Murphy: Sure.

Mr. Salerno: Paul?

Mr. Rosen: It's a Thursday.

Mr. George: It's good.

Mr. Rosen: It works for me.

Mr. Gordon: Fine for me.

Mr. Salerno: By agreement, Ron, 7:00 on September 23rd.

Mr. Gordon: That will be 3 nights in this room that week.

Mr. Salerno: So, 7:00 on Thursday, September 23rd, in this room for discussions and a possible vote. Is everybody in agreement with that?

Ms. Murphy: Yes.

Mr. Gordon: Fine.

Mr. Rosen: Yes.

Mr. George: Yes.

Mr. Salerno: Folks, thank you all for your participation. Trust me, we give a tremendous amount of weight to what our residents say and what the petitioners say. I think we can interpret all of your comments and give them all the appropriate weight. We're making great efforts to try and make this decision. We don't want anyone to feel that their positions and comments are not important. You all are to be complimented for your efforts and for your dignity and respect back and forth even though this is a very emotional issue for all of you. I thank you all for that. You make our job a little easier when you do that. That will cause us to adjourn. Thank you.

Mr. Gordon: I move to adjourn

Mr. Rosen: I second.

Mr. Salerno: Motion allowed.

The decision of the board is on the following page.

PROCEDURAL HISTORY

A. On or about May 20, 2004, AvalonBay Communities, Inc. (hereinafter "AvalonBay") applied to the Shrewsbury Zoning Board of Appeals (the "Board") for a comprehensive permit pursuant to G.L. c. 40B to construct a development (the "Development") consisting of 277 multi-family dwelling units and related improvements upon property containing a total of approximately 25.4 acres (the "Property") located on the south side of Route 20 approximately 0.5 miles westerly of its intersection with Route 9. The Property is identified on the Town of Shrewsbury Assessor's Tax Plate 36, Plots 40, 45 and 51.

B. After due notice was given in accordance with G.L. c.40B, §21 and M.G.L. c.40A, §11 by publication in the Worcester Telegram and Gazette on June 8, and June 15, 2004 and by first class mail to all parties in interest as shown on the most recent tax list, a public hearing was held on June 24, 2004 and was continued to July 28, 2004 and then to August 24, 2004.

C. As a result of a collaborative effort between AvalonBay and the Shrewsbury Board of Selectmen and other Shrewsbury town officials (including the Town Manager, Engineering Department and Building Inspector), the Development has been undertaken as a "Local Initiative Project" ("LIP"). An application for approval of the Development under the LIP guidelines and regulations (760 CMR 45.00) was jointly submitted by AvalonBay and the Town of Shrewsbury to the Massachusetts Department of Housing and Community Development ("DHCD"). By letter dated April 8, 2004, DHCD approved the LIP application and issued a Determination of Site Eligibility.

D. After the initial session of the public hearing on the matter, AvalonBay made certain changes to their plans, including the reduction of the number of units in the Development, increases in buffer zones to the residential neighborhood to the south, relocation of certain buildings and parking areas and reduction of the elevation of certain buildings. At the request of the Planning Board, changes were also made to the circulation of the internal driveways to improve the safety and efficiency for pedestrian and vehicular traffic entering, exiting and circulating the Property. The Development, as finally proposed, consists of 264 units in 17 separate residential buildings, a community center/leasing office, a recycling facility and related amenities and improvements. The Development will include a total of 530 parking spaces, including 425 surface spaces and six detached garage spaces for the apartment buildings, 55 surface spaces and 44 garage spaces for the townhouse units. The Development, as finally proposed, is shown on the following plans that were submitted to the Board in connection with the application and the public hearing (collectively, the "Plans"): "AvalonBay Communities, Shrewsbury, MA" prepared by H.W. Moore & Associates, Inc. (civil engineer), Thompson Liston Associates, Inc. (surveyor) and Hawk Design, Inc. (landscape architect), dated May 24, 2004, last revised July 23, 2004 (15 sheets numbered 1-15 and the landscape permit plan numbered L-1).

E. The public hearing was closed on August 24, 2004.

SEPTEMBER 23, 2004

PURPOSE: To deliberate and render a decision concerning the appeal of AvalonBay Communities, Inc., 1250 Hancock Street, Suite 804N, Quincy, MA, for a Comprehensive Permit pursuant to the provisions of Chapter 40B, Sections 20 to 23, of the Massachusetts General Laws, to permit the construction of a 277 unit multi-family apartment community upon property located at 890 Hartford Tpke. The subject premises is described on the Shrewsbury Assessor's Tax Plate 36 as Plots 40, 41, 45 and 51.

PRESENT: Anthony M. Salerno, Chairman, Paul M. George, Melvin P. Gordon, Bridget M. Murphy, Ronald I Rosen and Ronald S. Alarie, Building Inspector.

FINDINGS

1. The Applicant: AvalonBay, or a wholly-owned subsidiary of AvalonBay, is a "limited dividend organization" as that term is used in G.L. c. 40B, §21, and 760 CMR 30.02 and is eligible to apply for and receive a comprehensive permit in that it has agreed to limit the dividend on its invested equity in the Development to no more than what will be permitted under the Regulatory Agreement (as defined below). AvalonBay is a qualified applicant pursuant to 760 CMR 31.01 in that it is a limited dividend organization. The Development has received the approval of DHCD under the LIP program and is, therefore, eligible for a comprehensive permit under 760 CMR 45.04. AvalonBay has "control of the site" as that term is used in 760 CMR 31.01 in that AvalonBay has entered into a Purchase and Sale Contract for the acquisition of the Property from Moss Development, Inc. ("Moss") and Moss has entered into a purchase and sale agreement for the acquisition of the Property with the current owners of the property, AJA Realty Corp./Gary Alcock.

2. Statutory Minima for Low and Moderate Income Housing: Notwithstanding that Shrewsbury is a low-barrier community with a large inventory of market-rate and affordable multi-family housing and a Housing Production Plan that was recently approved by DHCD in accordance with 760 CMR 31.07(1)(i), the Town does not meet any of the statutory minima set forth in G.L. c. 40B, §20, or 760 CMR 31.04.

3. The Development: The Development, as shown on the Site Plan, consists of a total of 264 apartment units in nine (9) apartment buildings and eight (8) townhouse buildings, an ancillary community center/club house, a recycling center, maintenance facility and detached garage structures. The Development will include 98 one bedroom units, 142 two bedroom units and 24 three bedroom units. There will be a total of 530 parking spaces (surface and garage spaces) with related amenities and improvements developed upon the Property as shown on the Plans. The Development is initially to be known as "Avalon Shrewsbury."

4. Affordable Housing to be Provided: Based on the required reduction in the size of the Development, twenty-five percent (25%) of the units, i.e. 66 units, will be "low or moderate income housing" as that term is defined in G.L. c. 40B, §20, and will

be rented to eligible tenants whose annual income, adjusted for household size, will not exceed 80% of the applicable area median income as determined by the United States Department of Housing and Urban Development.

5. Access and Traffic Issues: The Board spent considerable time studying and hearing testimony on the traffic impacts of the Development. The principal proposed means of access to and from the site will be via a main access driveway off of Route 20, which is a State Highway Layout under the jurisdiction of the Massachusetts Highway Department (MHD). The Development will require a Highway Access Permit from MHD. AvalonBay and a representative of the Town Engineering Department met with MHD to discuss potential mitigation for Route 20 in the vicinity of the Property, including the widening of Route 20 from two lanes to three lanes and the installation of acceleration and deceleration lanes adjacent to the Property in conjunction with roadway widening that is already planned by other developers. AvalonBay also committed to providing exclusive left and right turn lanes for exiting movements at the site driveway to minimize delays for vehicles exiting the site. The Board took note of a level of service (LOS) "F" for those vehicles making a left-turn exit from the site in both the AM and PM peak hours. However, the Board understands that this LOS is comparable to many other un-signalized intersections and access/egress driveways located along Route 20 in the vicinity of the Property and acknowledged the testimony of AvalonBay's consultant that the traffic volumes at the site driveway would not meet the minimum peak hour volume threshold to warrant a signal. The Board also took note of the fact that any commercial development of the Property would generate far greater traffic impacts than the residential development proposed by AvalonBay. Overall, the Board found that the proposed access is properly designed to accommodate the needs of the Development and that, in any event, the mitigation to be implemented within the Route 20 corridor lies exclusively within the jurisdiction of MHD.

6. Buffering Issues: Several concerns were raised by a number of residents of the Southwoods neighborhood, which directly abuts the southerly boundary of the Property, at the public hearings concerning the visual impacts of the Development upon their neighborhood. In response to these concerns, AvalonBay changed its plan so as to increase the distance between certain buildings in the Development and the abutting single family residential properties. The Board noted that, with the changes to the plan made by AvalonBay, the entire Development now has a minimum setback of 100-feet between the closest building within the Development and the property lines of the Southwoods residents. This separation is now twice the distance set forth in Table II of the Zoning Bylaw. However, the Board noted that the existing vegetation within this area consists of deciduous plants and trees and that their visual buffering effect would be minimized during the late Fall, Winter and early Spring months. The Board also noted that the exposure of the proposed buildings to the abutters' properties, particularly with respect to the three story buildings, varies from lot to lot due to the changes in the topographical conditions within the neighborhood. The Board, therefore, encouraged AvalonBay to meet separately with the individual abutters to reach agreement on fencing and landscaping (berms or other landscaping). The Board felt that it was not appropriate to impose any condition that would require AvalonBay to place any landscaping or buffering upon any abutting property, as it was their opinion that such arrangements are a matter to be negotiated and consented to between private parties.

7. Sewer Issues: Based on the originally proposed 277 units, the Development was estimated to generate approximately 51,480 gallons per day (gpd) of sanitary sewerage calculated in accordance with the flow rates set forth in 314 CMR 7.15 (110 gpd per bedroom). Because the Development will result in the discharge of more than 15,000 gpd, it will require a sewer connection permit from the Massachusetts Department of Environmental Protection, Division of Water Pollution Control.

At the request of the Town Engineering Department, AvalonBay submitted a revised evaluation of the existing sewer system's ability to accommodate the flows from the Development. This evaluation confirmed that the capacity exists within the sewer system to handle the Development's flows.

8. Water and Fire Flow: Based on the originally proposed 277 units, the Development was estimated to require approximately 56,628 gallons per day (gpd) of water calculated in accordance with the flow as rates set forth in 314 CMR 7.15 (110 gpd per bedroom, plus 10% of water not discharged to the sewer system). Based on reports from the Town Engineering Department and on the Town's permitted capacity for water withdrawal, the proposed water connection is acceptable and there exists adequate capacity in the Town's water system to service the Development. The Board also received testimony that the design of the Development will be adequate to accommodate fire safety needs. Since the Town is under a Water Management Act Administrative Consent Order with DEP to reduce total water withdrawal from the Blackstone River Basin, the Board also insisted that there be no use of municipal water for irrigation purposes and that an on-site well will be installed for such purposes.

9. Site Drainage and Storm Water Management: Based on the original and the modified reports and plans submitted by AvalonBay, as well as the reports of the Town Engineering Department, the site drainage and storm water management plans of the Development comply with applicable Department of Environmental Protection requirements and are adequate and appropriate to accommodate the impacts of the Development.

DECISION

Based on the above findings, the Shrewsbury Zoning Board of Appeals unanimously voted to grant the appeal of AvalonBay Communities, Inc., 1250 Hancock Street, Suite 804N, Quincy, MA, for a Comprehensive Permit pursuant to the provisions of G.L. 40B, §§20-23, of the Massachusetts General Laws, to permit the construction of a 264 unit multi-family apartment community upon property located at 890 Hartford Turnpike, (Route 20) subject to the following conditions:

1. The Development shall be constructed substantially in accordance with the Plans submitted to and the applicant's presentation to the Board. Any changes thereto shall be governed by the provisions of 760 CMR 31.03.

2. To the maximum extent permitted by law, AvalonBay and its successors in interest shall reserve, as "low or moderate income housing" as that term is defined in

G.L. c. 40B, §20, a minimum of twenty-five percent (25%) of the units within the Development (the "Affordable Units"). The Affordable Units shall be reserved for occupants whose annual income, adjusted for household size, will not exceed 80% of the applicable area median income, as determined by the United States Department of Housing and Urban Development. The mix of Affordable Units shall be proportional to the overall mix of one, two and three bedroom units arranged throughout the multi-family buildings in the Development. The Affordable Units shall not be substantially different in appearance from the market-rate units in accordance with Local Initiative Program guidelines. Such units shall be subject to an affordable housing restriction in perpetuity or for the maximum period permitted by law or for as long as the Property is being used for multi-family housing.

The affordability restriction shall be governed by a Regulatory Agreement to be entered into between AvalonBay, DHCD and the Town of Shrewsbury, which shall be in form and substance reasonably satisfactory to AvalonBay and the Town (such approval not to be unreasonably withheld) and which shall be executed and recorded prior to the issuance of any certificate of occupancy for the Development. The Regulatory Agreement shall, among other things, assure that the Development is protected by an affordable housing restriction in accordance with G.L. 184, §§31-32, and provide for an agent to monitor the affordability requirements in the Development. The Board agrees that the Shrewsbury Housing Authority, Citizens' Housing and Planning Association or another qualified organization shall be an acceptable monitoring agent.

3. The Board hereby grants the exceptions from local by-laws and other rules and regulations as set forth in a letter to the Board dated August 20, 2004, from Goulston & Storrs, Counsellors at Law, on behalf of AvalonBay and incorporates said letter herein by reference. To the extent that the Plans show additional waivers at specific locations not expressly set forth above, these waivers are also granted. To the extent that the Plans are silent on a particular issue, the appropriate Town by-law, rules or regulations shall apply. In the event that AvalonBay determines that, in their final design of the Development, additional waivers not shown on the plans or referenced in the aforementioned letter are required, AvalonBay shall be required to obtain such additional waivers in accordance with a written request to the Board. The Board may grant such additional waivers in accordance with 760 CMR 31.03.

4. To the maximum extent permitted by law, residents of the Town of Shrewsbury, shall receive preference in the allocation of Affordable Units, the minimum number of such units being the greater of seventy percent (70%) of the total number of units within the Development or the maximum number permitted by law. When implemented, AvalonBay shall make reasonable efforts to comply with the Board of Selectmen's Affordable Housing Local Preference Policy. The initial marketing plan, during and upon completion of the construction of the Development, shall include marketing to such local residents. In no event shall this or any other condition require AvalonBay to take any action which would result in a violation of the Fair Housing Act of 1968, as amended, or any other applicable law, rule, ordinance, regulation or requirement. Without limiting the generality of the foregoing sentence, in the event of any conflict between the conditions set forth in this decision and the terms of the Regulatory Agreement, the terms of the Regulatory Agreement shall control.

5. To the extent that it is within its control to do so, AvalonBay shall use all reasonable efforts to ensure that the portion of the Property abutting Route 20, as shown on the site plan indicated as “Commercial Development – by Others” (the “Commercial Piece”), shall be developed for commercial purposes. AvalonBay shall not develop the Commercial Piece for residential development for a of not less than fifteen (15) years from the date of this decision.

6. The Board hereby grants waivers from certain Town fees and charges as set forth in Schedule 1, “List of Mitigation and Fee Agreements,” attached to the comprehensive permit application. Specifically, AvalonBay is not required to pay a Water Conservation Fee, a Sewer Connection Fee, or a Sewer Infiltration/Inflow (I/I) Fee for the Affordable Units in the Development as AvalonBay agreed, prior to the submission of the LIP application to DHCD, to make the following contributions to the Town: (a) a donation in the amount of \$168,000 for recreational facilities at Lake Street Park and (b) a donation of \$168,000 for the construction and/or renovation of Fire Department facilities. AvalonBay has further agreed to pay all other Town fees or charges relating to the construction of both the market-rate and the affordable housing units and, further, committed to complying with all of the mitigation conditions as set forth in Schedule 1. The total contribution shall be deposited with the Town within ninety (90) days of the issuance of the first building permit for any of the permanent buildings/structures to be constructed upon the Property.

7. A landscaped earthen berm shall be installed along the entire length of the southerly boundary of the Property as shown on the plan accompanying the submittals to the Board entitled “Original Plan, 277 Units” and “Revised Plan, 264 Units” as prepared by H. W. Moore Associates, Inc. Said berm shall commence at the northwesterly corner of Lot 22 as delineated on said plans and extend along the southerly boundary of the Property to the northeasterly corner of Lot 28. The configuration of the berm shall be such that it is a minimum of 15 feet in width and 6 feet higher than the adjoining natural grades of the Property. The berm shall be landscaped with Spruce, Hemlock or White Pine trees, with said trees being a minimum of 10 feet to 12 feet high and spaced a maximum of 8 feet to 10 feet apart at the time of their planting.

8. The 6 foot high vinyl privacy fence located to the southerly side of the off-street parking area adjacent to Building Number 3 and the chain link fence traversing the Property, which shall be a minimum of 4 feet in height, shall be installed as shown on the plan submitted to the Board entitled “Landscape Permit Plan, Sheet L-1” as prepared by Hawk Design, Inc., Dated 5/14/04 and Revised to 8/20/04.

9. That portion of the Property 100 feet northerly of the rear lot lines of the aforementioned Lots 22 through 28 shall remain in a natural state and no buildings or structures shall be constructed therein. This restriction shall not apply to the installation of the landscape berm and the fencing as required in Conditions 7 and 8 of this decision, for purposes of wetland replication or for the maintenance of the drain and sewer easement.

10. During construction, AvalonBay shall conform to all local, state and federal laws regarding noise, vibration, dust and the impacts of said construction upon the use of Town roads. AvalonBay shall, at all times, use all reasonable means to minimize inconvenience to residents in the general area. Building construction, site development, deliveries to the Property, the starting of construction equipment and similar activities shall start no sooner than 7:00 A. M. or continue later than 7:00 P. M., Monday through Saturday. There shall be no construction performed upon the Property on any Sunday or any state or federal legal holiday. During the construction period, a sign having letters a minimum of one inch in height shall be posted at any the entry to the Property stating these restrictions.

11. A sheltered school bus stop shall be located in the interior of the Development in a location determined by the Superintendent of Schools or his designee. The bus stop shall be situated so that children being transported can be picked up or discharged on the passenger curb side of the bus.

12. AvalonBay shall comply with all applicable requirements of the Americans with Disabilities Act and the Rules and Regulations of the Commonwealth of Massachusetts Architectural Access Board, 521 CMR.

13. The on-site illumination of the access driveways, off-street parking areas, pedestrian walkways and similar features shall be arranged and installed so as not to shine upon abutting properties. Site lighting shall be arranged and installed substantially in accordance with the plan submitted to the Board entitled "Landscape Permit Plan, Sheet L-3" as prepared by Hawk Design, Inc., Dated 5/14/04 and Revised to 8/20/04.

14. AvalonBay shall be responsible for the installation, operation, and maintenance of all aspects of the common facilities described herein, including, but not limited to, snow plowing, the removal of refuse and the maintenance of all utilities and drainage facilities. All roadways and utilities within the Development shall remain private.

15. In the event that the municipal water distribution system is found not capable of providing sufficient quantity or flow to the Property, it shall be the sole responsibility of AvalonBay to upgrade or improve the system to provide adequate water and pressure for domestic consumption and fire flows to the Property.

16. All landscaping approved by this comprehensive permit shall be maintained in good condition and Town water shall not be used for the irrigation of any landscaped areas or similar purposes. AvalonBay shall install and maintain an on-site well for such purposes. The on-site well(s) may not be used as a potable water supply for any building or structure constructed upon the Property.

17. All sewers shall be constructed in accordance with TR-16: Guide for the Design of Wastewater Treatment Works, published by the New England Interstate Water Pollution Control Commission, as well as all applicable Massachusetts Department of Environmental Protection requirements, to the extent applicable.

18. Prior to the issuance of any certificate of occupancy, AvalonBay shall provide evidence to the Board that a Response Action Outcome (RAO) Statement has been filed with Massachusetts Department of Environmental Protection for the portion of the Property known as the former Marane Oil Facility which is currently a "release site" under the Massachusetts Contingency Plan under Release Tracking Numbers 2-11916, 2-11405 and 2-1050.

19. No certificate of occupancy for any building shall be issued until the improvements specified in this decision and as set forth on the plans of record are constructed and installed so as to adequately serve said building. In lieu thereof, adequate surety, acceptable to and approved by the Board, may be submitted to the Town to insure the completion of said improvements.

20. AvalonBay shall permit the Town of Shrewsbury Board of Health to observe and inspect the demolition of the building situated upon the property formerly occupied by Rawlings Gear Works.

21. In accordance with the request made by the Massachusetts Department of Environmental Protection, the Massachusetts Environmental Policy Act Phase I waiver shall be approved prior to submitting sewer extension/connection applications to Massachusetts Department of Environmental Protection.

22. A Notice of Intent in accordance with the National Pollution Discharge Elimination Systems Phase II stormwater construction site program shall be filed with USEPA.

23. The detention basins shall be constructed, stabilized and operational prior to the development of the remainder of the site.

24. The top of all retaining walls adjacent to the driveway as it passes over the wetlands crossing leading to the townhouse-style buildings shall be equipped with a minimum 4-foot high chain link or similar type of fencing.

25. The initial 50 feet of the entrance/exit driveway utilized by construction vehicles and equipment, commencing at the southerly sideline of Route 20, shall be either an existing paved portion of the Property or a newly paved or washed stone surfaced driveway to minimize the tracking of earthen materials onto Route 20. Said driveway shall be constructed prior to the start of any site development.

26. The site contractor shall limit the area of ground disturbance and minimize the amount of tree cutting upon the site as much as is practicable.

27. The proposed curbing or temporary construction berm shall be installed at the same time that the base pavement of the roadways and the off-street parking areas is installed.

28. A copy of all required permits shall be submitted to the Engineering Department prior to the start of any construction upon the Property.

29. A pre-construction conference shall be held with the Engineering Department prior to any construction upon the Property.

30. As-built plans, in a form approved by the Engineering Department, shall be submitted prior to the issuance of the occupancy permit for the last multi-family building constructed upon the Property. Such plans shall also be submitted digitally on CD-ROM with the elevations shown thereon referencing the Town of Shrewsbury GIS datum.

31. Additional provisions for stormwater recharge, as set forth in a letter from the Shrewsbury Engineering Department to the Board dated August 24, 2004, shall be implemented on the site.

32. The development of the site shall be substantially in accordance with items 1, 2, 3 and 6 through 9 as set forth in the letter from the Shrewsbury Engineering Department to the Board dated August 24, 2004.

VOTE

Mr. Salerno	Yes
Mr. George	Yes
Mr. Gordon	Yes
Ms. Murphy	Yes
Mr. Rosen	Yes